

June 03, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2024–2025 term.

As a former Division I athlete, I thrive in collaborative environments where I am constantly honing my craft. I am excited by the fact that clerking presents the opportunity to refine my legal writing, as well as the opportunity to contribute to and learn from the flow of ideas on a range of legal issues.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendations from the following professors are also attached:

- Professor Barbara McQuade: bmcquade@umich.edu, (734) 763-3183
- Professor Evan Caminker: caminker@umich.edu, (734) 763-5221
- Professor Carrie Floyd: cfloyd@umich.edu, (734) 763-7211

Thank you for your time and consideration.

Respectfully,

Grayson Metzger

Grayson Metzger

(443) 977-0412 • gmmetzge@umich.edu • she/her/hers

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Juris Doctor GPA 3.792

Journal: Michigan Law Review, *Senior Editor*

Activities: Oral Advocacy Competition, *Problem Design Team*

Property Tax Appeals Project, *Student Advocate*

Invited to serve on the Campbell Moot Court Executive Board 2023–2024

Ann Arbor, MI

Expected May 2024

BROWN UNIVERSITY

Bachelor of Arts in International Relations

Honors: Phi Beta Kappa; 4x NFCA Scholar-Athlete

Activities: Varsity Softball, NCAA Division I

Providence, RI

May 2018

EXPERIENCE

NEW HAMPSHIRE PUBLIC DEFENDER

Legal Intern—Eligible for student practice under N.H.R. Sup. Ct. 36

Manchester, NH

Summer 2023

VETERANS LEGAL CLINIC

Student Attorney

- Drafted a trial brief and jury instructions for a termination of tenancy case in which there was a question regarding the application of federal law to a former public housing project
- Drafted a motion to modify parenting time and child support; drafted complaint for a consumer fraud case
- Discussed case strategy and expectations with clients; engaged in settlement negotiations

Ann Arbor, MI

Fall 2022

MECKLENBURG COUNTY PUBLIC DEFENDER

Legal Intern

- Interviewed clients, reviewed video evidence, and drafted plea negotiation letters to ADAs sharing client stories and explaining mitigating factors
- Prepared internal discovery and legal research memoranda on Fourth Amendment suppression issues for drug trafficking, property, and concealed weapons cases

Charlotte, NC

May 2022 – August 2022

PUBLIC RELAY

Media Analyst

- Analyzed print, social, and broadcast media to identify trends in various markets and provide clients with detailed updates of their media coverage

Tysons Corner, VA/Remote

Dec. 2019 – June 2021

REBUILDING TOGETHER DC ALEXANDRIA

AmeriCorps Project Coordinator

- Conducted 50+ home visits and developed preliminary work scopes for senior and low-income DC homeowners in need of no-cost home repairs
- Discussed repair priorities with clients and advocated for funding to be allocated to meet client needs

Alexandria, VA/Washington, D.C.

Jan. 2019 – Dec. 2019

ADDITIONAL

- Former Division I athlete looking to bring a growth mindset and discipline to a new team environment
- **Interests:** writing poetry, pickleball, weekend hikes to look for wildflowers

Control No: E196663901

Issue Date: 05/30/2023

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Metzger, Grayson M
Student#: 12834719



Paul R. Peterson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2021 (August 30, 2021 To December 17, 2021)

LAW	510	001	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	A
LAW	520	002	Contracts	Daniel Crane	4.00	4.00	4.00	A
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	A-
LAW	593	004	Legal Practice Skills I	Mark Osbeck he-him-his	2.00		2.00	H
LAW	598	004	Legal Pract:Writing & Analysis	Mark Osbeck he-him-his	1.00		1.00	H

Term Total	GPA: 3.900	15.00	12.00	15.00
Cumulative Total	GPA: 3.900	12.00	15.00	

Winter 2022 (January 12, 2022 To May 05, 2022)

LAW	530	001	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	A
LAW	540	002	Introduction to Constitutional Law	Evan Caminker	4.00	4.00	4.00	B+
LAW	594	004	Legal Practice Skills II	Mark Osbeck he-him-his	2.00		2.00	H
LAW	673	001	Family Law	Tracy Van den Bergh	3.00	3.00	3.00	B+

Term Total	GPA: 3.554	13.00	11.00	13.00
Cumulative Total	GPA: 3.734	23.00	28.00	

Continued next page >

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Control No: E196663901

Issue Date: 05/30/2023

Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Metzger, Grayson M
Student#: 12834719



Paul R. Grayson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2022 (August 29, 2022 To December 16, 2022)

LAW	536	001	Nat'l Security & Civ Liberties	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	669	002	Evidence	David Moran	3.00	3.00	3.00	A-
LAW	978	001	Veterans Legal Clinic	Matthew Andres	4.00	4.00	4.00	A
				Carrie Floyd				
LAW	979	001	Veterans Legal Clinic Seminar	Matthew Andres	3.00	3.00	3.00	A-
				Carrie Floyd				

Term Total GPA: 3.700 13.00 13.00 13.00

Cumulative Total GPA: 3.722 36.00 41.00

Winter 2023 (January 11, 2023 To May 04, 2023)

LAW	459	001	Law&Hist:Econ Instit of Capit	Veronica Santarosa	2.00	2.00	2.00	A
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	B+
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00	4.00	4.00	A+
LAW	730	001	Appellate Advoc:Skills & Pract	Evan Caminker	4.00	4.00	4.00	A+

Term Total GPA: 3.971 14.00 14.00 14.00

Cumulative Total GPA: 3.792 50.00 55.00

Fall 2023 (August 28, 2023 To December 15, 2023)

Elections as of: 05/30/2023

LAW	443	001	Theoretical Persp on Crim Proc	Gabe Mendlow	2.00			
LAW	480	001	MDefenders	Eve Primus	2.00			
			Public Defender Training Institute (Part I)					
LAW	642	001	Mass Incarceration	Roscoe Jones Jr	1.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	681	001	First Amendment	Don Herzog	4.00			

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The University of Michigan Law School Cumulative Grade Report and Academic Record

Name: Metzger, Grayson M
Student#: 12834719



Paul R. Peterson
University Registrar

End of Transcript
Total Number of Pages 3



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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

BROWN UNIVERSITY
 Providence, Rhode Island 02912
 OFFICIAL ACADEMIC TRANSCRIPT
 401-863-2500

Student Number: B00998271
 Name: Metzger , Grayson M

Record Date: 05/11/23
 Page 1 of 1

Code	Course Number	Course Title	Grade	Code	Course Number	Course Title	Grade
Fall 2014: Admitted as a Degree Candidate The College				Undergraduate Fall 2016			
For Work Completed At Advanced Placement Program (06/14)				ECON 1540	International Trade		A
				HIST 0244	Middle East:1800s to Present		A
				POLS 1420	Money, Power in Intl Pol Econ		A
				RUSS 0500	Advanced Russian		A
				Undergraduate Spring 2017			
BIOL 0200	Foundation of Living Systems	T		ANTH 0680	Anthropology of Food		A
MATH 0090	Introductory Calculus, Part I	T		ECON 1620	Introduction to Econometrics		A
MATH 0100	Introductory Calculus, Part II	T		POLS 1020	Pol Illicit Global Economy		A
Undergraduate Fall 2014				RUSS 0600	Advanced Russian		B
ANTH 0300	Culture and Health	A		Undergraduate Fall 2017			
ECON 0110	Principles of Economics	B		COST 0200	Meditation and the Brain		S
HIST 0150A	History of Capitalism	B		INTL 1803	Comparative Politics of Fin		A
NEUR 0010	The Brain:Intro to Neuroscienc	B		SOC 1260	Market Rsrch in Pblc/Priv Sctr		A
Undergraduate Spring 2015				SOC 1620	Globalization/Social Conflict		A
ECON 1110	Intermediate Microeconomics	B		Undergraduate Spring 2018			
ENGN 0020	Transforming Society	A		ENGL 0100F	Devils, Demons, and Do Gooders		A
PHP 0310	Health Care in US	A		HIST 0150G	History of Law: Great Trials		A
POLS 1290	The Rise of China	A		URBN 1220	Planning Sustainable Cities		S
Undergraduate Fall 2015				-----			
ANTH 0110	Anth and Global Socl Problems	A		Degree Awarded			
POLS 0400	Intro to International Politcs	A		Bachelor of Arts			
Y RUSS 0100	Introductory Russian	A		May 27, 2018			
URBN 1230	Crime and the City	A		AB - International Relations			
Undergraduate Spring 2016				(Political Economy and Society)			
AMST 1600D	Sports in American Society	A		-----			
ECON 1210	Intermediate Macroeconomics	A		REMARKS:			
Y RUSS 0200	Introductory Russian	A		04/18: ELECTED TO PHI BETA KAPPA			
RUSS 1350	Putin, Russia, + the West	A		-----			
Undergraduate Summer 2016				-----			
RUSS 0350	Intermed Russan St. Petersburg	A		END OF TRANSCRIPT			
RUSS 1060	St. Petersburg: A Window Rusia	A					



May 23, 2023

Your Honor:

I am thrilled to recommend Grayson Metzger for a clerkship in your chambers. I had the pleasure of teaching Grayson in the University of Michigan Law School's Veterans Legal Clinic (VLC) during the fall semester of 2022. Grayson zealously advocated on behalf of her clients, demonstrating her legal acuity, ability to take initiative with little direction, and her dedication to her clients. She was an outstanding student attorney in the VLC; I am confident that she will be a devoted and exceptional clerk in your chambers.

Because I work closely with the VLC's students, I have gotten to know Grayson and her work well. The VLC provides free, direct representation to veterans in all types of civil legal aid matters, including housing, consumer, and family law cases, among others. Students are required to quickly learn unfamiliar law while balancing several cases at once and while providing high-quality legal representation. Students act as the "lead" attorneys in the cases, conducting client interviews, researching relevant legal issues, drafting pleadings, motions, and discovery, and preparing for and conducting hearings. As the supervising attorney, I review all written documents, attend all court appearances, and meet frequently with students to discuss strategic decisions to ensure high quality representation and to provide feedback on students' performance. While I review everything the students do, the students are expected to work independently, to manage and maintain relationships with their clients, the opposing counsel and the courts, and to make the strategic decisions in their cases.

Grayson has been an outstanding clinic student; she has demonstrated that she has the talent, skills, and demeanor to be an excellent judicial clerk. In one of her primary cases in the VLC, Grayson represented a client living in a subsidized housing unit in a wrongful termination of tenancy action. Grayson drafted numerous motions and pleadings in the matter, including a motion for summary disposition, a trial brief, and jury instructions. Her written work was well-drafted, polished, and persuasive. I was particularly impressed with her ability to craft accessible, well thought-out, jury instructions on a novel and untested theory of subsidized housing law. While Grayson was ultimately unable to argue the merits of her proposed jury instructions because the court adjourned the hearing, she was prepared to argue the merits and even volunteered in the clinic after her semester ended to appear at the hearing. Grayson is an excellent writer who takes great pride in her work, and I am confident she will be a strong addition to your chambers.

Not only has Grayson excelled in her written work while in the VLC, but she has adeptly represented clients under intense time pressures. In one of the clinic's larger cases – a real estate fraud case – Grayson conducted the initial interview and fact investigation for the case immediately after the client contacted the clinic. After a careful review of the client's documents, Grayson realized that the client's contract contained a one-year statute of limitations, which was



set to run four weeks after her initial interview. Grayson quickly investigated the facts of the client's dispute, conducted significant legal research to identify his claims, and skillfully drafted a compelling and well-pled, seven-count complaint all before the statute of limitations ran. Despite time pressures, Grayson was able to swiftly pivot to meet the pressing needs of the client while providing high-quality legal representation.

While Grayson's legal skills were superb, I was most impressed by her dedication and devotion to her clients. Because most of the VLC's clients are indigent, many lack transportation, internet access, and access to many basic necessities. Grayson frequently identified additional social supports and resources for her clients, while working collaboratively with the VLC's social work student to provide holistic representation. She also took additional time to meet in-person with her clients when they could not meet at the Law School or virtually. Grayson's dedication to her clients allowed her to not only address her client's pressing legal issues, but to help them access much needed social service resources. Her unique ability to empathize and to connect with clients in crisis will make her a compassionate and skillful lawyer who is able to creatively problem solve.

Grayson is a pleasure to work with. She is smart, collegial, and devoted to her work, her clients, and her colleagues. She played an integral part in building the community of the VLC last semester; she was a continuous support to her colleagues. In short, I am confident that Grayson will be an excellent judicial clerk and a strong addition to your chambers. I wholeheartedly recommend Grayson for a position within your chambers, and I would be happy to answer any other questions you may have about Grayson and her outstanding qualifications. Please feel free to contact me anytime at 734-763-7211 or by email at cfloyd@umich.edu.

Sincerely,



Carrie L. Floyd
Clinical Teaching Fellow
Veterans Legal Clinic

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

June 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Grayson Metzger for a clerkship in your chambers. Grayson is a rising third-year student at the University of Michigan Law School, where she serves as a senior editor on the Michigan Law Review. She seeks to serve as a law clerk to hone her already impressive skills to prepare for work as a public defender.

I have had the pleasure of teaching Grayson in two different classes, first-year Criminal Law, and an upper-level course, National Security and Civil Liberties. I found Grayson to be both thoughtful and quick on her feet, with a nimble ability to apply the law in various scenarios. Grayson is also a strong writer, as demonstrated in her excellent work on various writing assignments and exam problems for the two classes. These skills will serve her well as a law clerk.

Before law school, Grayson had a variety of work experiences that give her a maturity that shines through in class. Between college and law school, she interned as an analyst for the Pew Research Center, worked as an AmeriCorps project coordinator, and served as a media analyst for a public relations firm. These experiences sharpened her analytical, teamwork, and writing skills, all essential attributes for a successful law clerk and lawyer. As a law student, Grayson has earned high grades while managing to be an active member of our law school community. In addition to serving on the law review, Grayson has been a leader for a number of student organizations, including the first year Oral Advocacy Competition. Her work on the design team for the competition parallels the work of a law clerk. In addition to helping to write the problem, she researched the case law to be provided to the 120 student participants. As a college student at Brown University, Grayson earned Phi Beta Kappa honors while competing in Division I softball, an impressive feat of academic achievement and time management. Grayson's track record before and during law school indicates an ability to handle the demands of a clerkship with excellence.

I previously served as U.S. Attorney for the Eastern District of Michigan. In that role, I had the opportunity to hire more than 60 lawyers, and Grayson has the kinds of qualities that I would look for in a new hire—a strong intellect, an ability to work with others respectfully, and effective communication skills. Grayson possesses all of these qualities in abundance, which will make her a tremendous resource as a law clerk.

I know from my own experience as a law clerk that a judge's chambers can be like a family, so it is important to bring in clerks who will get along with others, respect confidences, and perform every task with enthusiasm and excellence. I think Grayson is very well suited to succeed in this environment. She will be an able assistant to any judge who hires her as a clerk. She has the intellectual capacity to tackle and solve challenging legal problems, she can express her ideas effectively in writing, and she will be a delightful colleague.

For all of these reasons, I enthusiastically recommend Grayson Metzger for a clerkship in your chambers. Please let me know if I can provide any additional information.

Sincerely,

Barbara L. McQuade
734.763-1621
bmcquade@umich.edu

Barbara McQuade - bmcquade@umich.edu - 734-763-3813

UNIVERSITY OF MICHIGAN LAW
625 South State Street
Ann Arbor, MI 48109

EVAN H. CAMINKER
Dean Emeritus & Branch Rickey Collegiate Professor of Law

May 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I heartily support Grayson Metzger's candidacy for a judicial clerkship. I'm confident she will be an excellent law clerk and a welcome addition to your chambers.

I have taught Grayson in two classes, a first-year Constitutional Law course (in which she earned a B+) and an upper-division Appellate Advocacy course (in which she earned a quite-rare A+). Grayson was a joy in both courses, being a thoughtful and dependable contributor to class discussions. She regularly asked very smart and on-point questions and offered provocative insights on both doctrinal and broader analytical approaches and analogies. As just one example, in Constitutional Law Grayson posited a hypothetical congressional statute that prohibited States from using the colors red, white, and blue in their official state flags. Such a statute arguably serves a legitimate federal interest in protecting the distinctiveness of the national flag; it does not "commandeer" affirmative state conduct as traditionally defined in the Supreme Court's anti-commandeering doctrine; it does not preempt any power traditionally reserved to the states as defined by subject matter; and yet it seems quite dismissive of basic principles of state sovereignty and dignity. The hypo generated a far-reaching conversation about both the propriety and challenges of invoking nontextual values in constitutional adjudication and about the substance of any such constitutional values. This was a repeated pattern: Grayson had a knack for coming up with a question or comment that helpfully illuminated or tested complicated legal concepts or doctrines.

I worked with Grayson more closely and extensively in Appellate Advocacy. This course involves an extremely rigorous and intense simulation exercise focusing on federal appellate practice. Each student prepared three long briefs (changing sides midstream) and delivered three oral arguments regarding a manufactured hypothetical involving a criminal prosecution of former President Donald Trump based on his January 6 rally. To successfully navigate the course, a student had to develop a wide range of skills, with an emphasis on sophisticated fact-based legal reasoning and nuanced approaches to persuasive communication. Grayson was a leading contributor to class discussions, and her ability to construct creative and coherent legal arguments continued to impress me. As reflected in the A+ grade, her briefs were impressively well argued and tightly crafted. But what stood out most for purposes of this reference was the effort Grayson put into learning how best to carefully read and mine the record to prompt questions that in turn can drive more nuanced legal analyses. Frankly (and disappointingly), many law students want to opine about legal principles in the abstract and have no patience for the stubborn facts. By contrast, Grayson grounded her legal argumentation in reality and maintained a healthy focus on the factual record — an obviously necessary inclination for an effective law clerk.

Grayson is a delightful young woman. She is poised and self-confident, while at the same time being a bit self-effacing. Both liked and appreciated by her peers, Grayson is warm, engaging, and amiable; I'm completely confident she'll wear extremely well in the context of a busy and high-pressure work environment.

In the near term, Grayson plans to work as a trial-level public defender in a state system. I myself can easily see her doing appellate level work in the longer term. I suspect she'll create many opportunities for herself once she demonstrates her impressive lawyering skills. Wherever her path takes her, I'm confident she'll end up making her mentors quite proud.

In sum, Grayson would be an excellent addition to your chambers. I enthusiastically recommend her for this position.

Sincerely,

Evan H. Caminker

Evan Caminker - caminker@umich.edu - 734-764-5221

Grayson Metzger

(443) 977-0412 • gmmetzge@umich.edu • she/her/hers

This writing sample is an excerpt from an appellate brief prepared for an appellate advocacy practicum. We were given a mock indictment and a closed universe of cases to answer the question of whether a former President could be criminally prosecuted for his conduct while in office.

This writing sample is my own work. I made several minor edits based on feedback from my professor at the end of the term.

Argument

I. President Trump may not be indicted under the obstruction and incitement statutes because a sitting President is not subject to criminal laws punishing “whoever” engages in the proscribed conduct.

The federal obstruction and incitement statutes do not explicitly define “whoever,” and substantive principles of statutory interpretation favor exclusion of a sitting President. Donald Trump may not be indicted under these statutes for actions taken while he was the sitting President for three reasons. First, the plain meaning of “whoever” is ambiguous with respect to the President. *See* 18 U.S.C. § 1512(c)(2)(Obstructing an Official Proceeding); 18 U.S.C. § 2101 (Inciting a Riot). Second, the Court may fairly avoid a serious separation of powers question by construing “whoever” to exclude the President. Lastly, Congress has not expressly applied these criminal statutes to the President, and thus the presidential clear statement rule precludes application to President Trump’s alleged conduct.

A. The plain meaning of “whoever” in the obstruction and incitement statutes is ambiguous.

Congress does not define the term “whoever” in either statute charged in the indictment, although it does precisely define other elements of each offense. The obstruction statute applies to “whoever corruptly” obstructs or influences an official proceeding. 18 U.S.C. § 1512(c)(2). “Official proceeding” is statutorily defined as “a proceeding before Congress” or other specified body; “corruptly” means “acting with improper purpose, purposely or by influencing another.” 18 U.S.C. § 1515. The indictment extensively cites case law to define “obstructive act,” “nexus to a[n] . . . official proceeding,” “improper purpose,” and “corrupt means.” R.1: Indictment 101, 127. Yet, the indictment neglects to define “whoever” by reference to statute or case law. Similarly, the incitement statute establishes criminal penalties for “whoever travels in interstate or foreign commerce” to incite, organize, promote, or participate in a riot. 18 U.S.C. § 2101.

Both “riot” and “to incite a riot” are defined by statute, but the indictment fails to define “whoever.” 18 U.S.C. § 2102.

The dictionary defines “whoever” as “whatever person; no matter who,” suggesting a broad meaning of the word. Merriam-Webster, <https://www.merriam-webster.com/dictionary/whoever>. However, words of such broad reach are often implicitly narrowed by context in their colloquial usage. If a person announces to her friends “whoever doesn’t have Thanksgiving plans is invited to my house,” one would not assume that she would welcome a passerby who overheard the statement into her home on Thanksgiving Day. Congress also appreciates the ambiguity inherent in words of broad meaning. Indeed, presumably responding to confusion about whether “person” and “whoever” encompass nonperson entities, Congress has clarified that both terms include “corporations, companies, associations . . . as well as individuals.” 18 U.S.C. § 1.

“Whoever” could be characterized either as a term of art or generic drafting language. It is used throughout the federal code—in the obstruction and incitement statutes at issue here, in the kidnapping statute, 18 U.S.C. § 1201 (“whoever unlawfully seizes . . .”), in the bribery statute, 18 U.S.C. § 201 (“whoever, being a public official), and in countless others. Congress may desire to proscribe specific conduct for all persons when it uses “whoever” in criminal statutes. Nevertheless, Congress is aware that the population who may ultimately be penalized for such conduct is limited by legal immunities, affirmative defenses, and determinations of competency to stand trial. For example, “whoever” applies to a person who participates in a riot, but it would not apply to that same person if the prosecutor offers him immunity to testify against the person who planned the event and provided weapons to attendees. 18 U.S.C. 2101. The meaning of “whoever” is context dependent, and thus the Court’s statutory analysis cannot end with plain meaning.

B. This Court can avoid a serious separation of powers question because it is fairly possible to interpret “whoever” in the obstruction and incitement statutes to exclude a sitting President.

“Whoever” does not unambiguously include the President and the canon of constitutional avoidance counsels against inclusion as well. This canon derives from the “cardinal principle” that the Court must consider whether there is a “fairly possible” construction of a statute that allows the Court to avoid questions raising a “serious doubt of constitutionality.” *Public Citizen*, 491 U.S. 440, 465–66 (1989) (quoting *Crowell v. Benson*, 285 U.S. 22 (1932)). The Court applies the avoidance canon most strictly where the constitutional question relates to the separation of powers. *See Public Citizen*, at 466.

The constitutional avoidance canon is triggered by the question of whether the term “whoever” in the obstruction and incitement statutes includes a sitting President. First, subjecting a President to criminal liability for conduct while in office raises separation of powers concerns similar to those addressed in the context of civil damages liability. *See Nixon v. Fitzgerald*, 457 U.S. 731 (1982); *Clinton v. Jones*, 520 U.S. 681 (1997). Second, it is fairly possible for the Court to interpret “whoever”—an ambiguous term—to implicitly exclude the President.

1. Including the sitting President in the obstruction and incitement statutes seriously threatens to infringe on the performance of his constitutional duties.

When Congress makes laws that intrude on executive power and limit the President’s ability to perform his constitutional duties, the Court conducts a constitutional analysis. There are two possible paths of inquiry. First, where the power at issue is core to the presidency and explicitly constitutionally delegated to the President, the Court refuses to tolerate any intrusion by Congress. *Public Citizen*, 491 U.S. 440, 485 (1989) (Kennedy, J. concurring). *See also United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872). Alternatively, where the power is not enumerated, but rather derived from the President’s general executive power, the Court conducts a balancing

test to determine whether congressional interests in encroaching on presidential power outweigh the burden on the President. *Fitzgerald*, at 754.

Here, the obstruction and incitement statutes facially threaten to unduly burden presidential functions. Congress has the power to make laws, and it has an interest in people following these laws. U.S. Const. Art. I, § 1; § 8, cl. 18. Specifically, the obstruction statute protects the sanctity of congressional proceedings from corrupt influence, *see* 18 U.S.C. § 1512(c)(2), and the incitement statute deters and punishes mob violence. *See* 18 U.S.C. § 2101. However, applying these statutes to the President potentially infringes on core presidential powers. Hypothetically, a President could be charged with inciting a riot for validly exercising his Commander-in-Chief power by speaking to troops before a military operation. Art. II, § 2, cl. 1. The President could also be charged with obstruction of an official proceeding for validly exercising his power to adjourn Congress. Art. II, § 2, cl. 3.

Although a conflict between the obstruction or incitement statutes and the President's core powers is imaginable, the facts of this case more likely deal with encroachment on the President's general executive power. The President frequently addresses the public, and the ability to communicate with the public naturally follows from the Vesting and Take Care clauses. Art. II, §§ 1, 3. The Office of Legal Counsel recognizes that the President's official role includes explaining, advocating, and defending policies. Office of Legal Counsel, Payment of Expenses Associated with Travel by the President and Vice President (Mar. 24, 1982). Also, in *Carroll v. Trump*, the district court conceded that presidential remarks about policies and elections are related to executive functions because they "alert the public about what the government is up to." 2020 WL 6277814 at 8 (S.D.N.Y. 2020). *Cf. Wuterich v. Murtha*, 562 F.3d 375, 384 (2009) (legislator's ability to do his job is tied to his relationship with the public and colleagues in Congress).

President Trump's actions on January 6, 2021 are well within this realm of general executive power, but the government alleges these acts are criminal because of his intent. The indictment alleges that President Trump spoke to a crowd of his supporters on the Ellipse and tweeted about the electoral count and potential election fraud. R.1: Indictment 101, 110–11. These remarks allegedly coincided with an attack on the Capitol building that forced Congress to stop the electoral count. *Id.*, at 111, 122. President Trump can be convicted for inciting a riot only if the government can show that Trump's actions proximately caused a crowd of people to forcibly enter the Capitol, and that his words were "directed to inciting or producing imminent lawless action." *Id.*, at 129 (quoting *Brandenburg v. Ohio*, 395 U.S. 444 (1969)). Likewise, President Trump can be convicted for obstruction only if the government can prove that Trump acted "corruptly." Consequently, the intent elements of the obstruction and incitement statutes call into question the otherwise legitimate exercise of the President's executive authority.

The Court can resolve this tension by weighing the congressional interests in the obstruction and incitement statutes against the burden on the executive, but this balancing test is precisely the constitutional analysis the avoidance canon seeks to bypass. *See Public Citizen*, 491 U.S. 440, 482 (Kennedy, J. concurrence) (rejecting the majority's statutory interpretation for lack of a "fairly possible" alternative interpretation of "utilize" and proceeds to the separation of powers balancing test). *See also Fitzgerald*, at 748 n.27 (Court forced to decide the constitutional issue because the lower court had assumed a cause of action against the President).

Applying the obstruction and incitement statutes to the sitting President raises not just a doubt of constitutionality, but a *serious* doubt. In these particular circumstances, the statutes impede the President's ability to speak freely to his constituency. A finding of criminal liability here rests on whether President Trump's rhetoric is considered incendiary or hyperbolic, meant to be taken literally or figuratively. Finding that the President's broad range of discretionary

responsibility could make inquiry into his motives “highly intrusive,” the *Fitzgerald* court held that only civil damages immunity for conduct within the outer perimeter of the President’s duties could sufficiently minimize the burden on the executive branch. *Fitzgerald*, at 756–57. Here, the subjective inquiry required by both the obstruction and incitement statutes is also highly intrusive, compelling the Court to reach the constitutional analysis.

The serious doubt is not eliminated if, *arguendo*, the Court immunizes the President from criminal liability for official acts but finds that President Trump’s conduct was unofficial. First, the line between official and unofficial conduct is inherently blurred. The Office of Legal Counsel has recognized that “it is simply not possible to divide many of the actions of the President . . . into utterly official or purely political categories.” OLC Expenses Memo, at 1. The *Fitzgerald* court also recognized the difficulty in delineating “which of the President’s innumerable ‘functions’ encompassed a particular action,” and thus extended immunity to the outer perimeter of official conduct. *Fitzgerald*, at 756. The facts at hand thicken the haze. The government will surely argue that President Trump acted in an unofficial capacity when he advocated for his political supporters to interfere with the electoral count at the Capitol. But the facts alleged in the indictment just as plausibly depict a President giving a speech encouraging the crowd to exercise their constitutional right to protest.

If courts and the executive branch view the line between official and unofficial conduct as blurry, the President might be concerned how others perceive actions he genuinely believes are official. Consequently, a President could avoid official conduct for fear that the Department of Justice or a jury might consider those actions unofficial, resulting in the President’s exposure to criminal liability and the potential loss of personal liberty. Hesitation under these circumstances would frustrate the purpose of immunity for official conduct. *Cf. Fitzgerald*, at 756 (rejecting a functional approach to presidential immunity because inquiry into the

President's motives would "deprive immunity of its intended effect"). Thus, a serious doubt of constitutionality is raised if either unofficial or official presidential conduct is covered by the obstruction and incitement statutes, and the Court should avoid including the President if there is a fairly possible alternative construction of these statutes.

2. It is fairly possible to exclude the President from the term "whoever" in these statutes.

The Court may avoid constitutional questions only where an alternative interpretation of the statute is "fairly possible" or "otherwise acceptable." *Public Citizen*, at 465–66. Interpreting "whoever" to exclude the President is fairly possible because the word is ambiguous, exclusion would be consistent with the purposes of existing immunity, and Congress can amend statutes as needed.

First, "whoever" is an ambiguous term frequently used in criminal statutes. *See supra* Section I.A. Although Congress plausibly intends to deter all persons from engaging in particular conduct when it uses the word "whoever," the word does not definitively capture who may be punished for such conduct. Various immunities (diplomatic, witness), affirmative defenses (insanity, necessity), and competency evaluations limit who may be punished for acts Congress has criminally proscribed. The Court has previously found that ambiguity in a statutory term invites alternative interpretations where a constitutional issue is at stake. In *Franklin v. Massachusetts*, for example, the Court considered whether to include the President in the term "agency," which would have allowed judicial review of his actions under the Administrative Procedure Act. 505 U.S. 788 (1992). In finding that inclusion would violate the separation of powers, the Court added the President to a list of exclusions already expressly listed in the APA. *Id.* at 800. In *Public Citizen*, the Court promptly invoked the constitutional avoidance canon after finding that an unqualified reading of the word "utilize" would lead to absurd results. 491 U.S. 440, 452–55. The term "whoever" analogously invites alternative interpretations.

Second, interpreting “whoever” to exclude the President in the obstruction and incitement statutes is consistent with the purposes of the immunity doctrine. In granting civil immunity to public officials, the Court has repeatedly concluded that absolute immunity for official acts prevents officials from hesitating to exercise the discretion inherent in their duties. *See Spalding v. Vilas*, 161 U.S. 483, 499 (1896) (Postmaster General); *Pierson v. Ray*, 386 U.S. 547 (1967) (state judges); *Imbler v. Pachtman*, 424 U.S. 409 (1976) (state prosecutors). While absolute immunity is reserved for officials with particularly sensitive responsibilities—such as judges, prosecutors, heads of executive branch departments—the Court also recognizes immunity for other public officials for acts performed in good faith. *See Butz v. Economou*, 438 U.S. 478 (1978) (federal executive officials); *Pierson v. Ray*, at 557 (police officers). *See also Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (establishing an objective standard for the qualified immunity “good faith” inquiry). Time and again the Court has acknowledged that the public interest suffers when government officials second-guess their decisions. *Id.* Where civil damages liability distorts decisionmaking, criminal liability incentivizes even greater caution. If immunity from criminal liability is imaginable—even if only for official acts—it is equally plausible to exclude the President from criminal laws of general applicability as a matter of statutory interpretation.

Lastly, excluding the President from the obstruction and incitement statutes does not place an insurmountable burden on Congress that would render the interpretation impossible or unacceptable. Congress could easily amend the obstruction and incitement statutes to include the President. To preempt statutory ambiguity in the future, Congress could pass a law clarifying that the term “whoever” includes the President of the United States in all statutes in which the word appears. This law would be similar to the Dictionary Act, in which Congress clarified that “in determining the meaning of any Act of Congress, unless the context indicates otherwise— . . . ‘whoever’ include[s] corporations . . . as well as individuals.” 1 U.S. § 1. Given the separation of

powers issues at stake when laws potentially chill presidential conduct, Congress should make a conscious choice whether to sweep broadly or to carefully consider every statute's effect on the President.

C. The clear statement rule would require an express statement by Congress before applying the obstruction and incitement statutes to a sitting President's official conduct.

1. The Supreme Court established a clear statement rule in *Franklin v. Massachusetts*.

Bolstering the constitutional avoidance argument, the clear statement rule established in *Franklin v. Massachusetts* guides the Court to exclude the President from the scope of the obstruction and incitement statutes. 505 U.S. 788 (1992). In *Franklin*, the Court considered whether the term “agency” in the Administrative Procedure Act included the President, thus subjecting the President's actions in the reapportionment process to judicial review. On the issue of reviewability under the APA, the Court stated that it “would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion.” *Franklin*, at 801. Assuming the President was included in the statute would raise significant separation of powers concerns and the Court was not willing to let “textual silence” dictate such a result. *Id.*

In creating the clear statement rule, the *Franklin* court cited a footnote from *Nixon v. Fitzgerald* which implied that the Court could approach presidential immunity differently in circumstances where Congress had created an express cause of action against the President. *Fitzgerald*, at 748 n.27 (1982). The *Fitzgerald* court acknowledged that the disposition of the case assumed an implied cause of action, requiring the Court to reach the question of absolute presidential immunity from civil damages liability. The tenor of footnote 27 suggests that, had the Court presided over the *Fitzgerald* case itself, it might not have found that an implied cause

of action existed in the first place. *Franklin* expounds upon this sentiment to flesh out the bounds of the clear statement rule.

In its motion to dismiss, the government states that neither *Franklin* nor *Public Citizen* “announces such a rule nor rests its holding on such a rule,” R:3 at 301, begging the question—if the Court intended to announce a “clear statement rule,” why did it not explicitly say so? Yet, the *Franklin* court emphatically and consistently announced its intentions. In half a page the Court stated three separate times that it would require an express statement by Congress before proceeding: “[T]extual silence is not enough to subject the President to the provisions of the APA;” “[W]e would require an express statement by Congress before assuming it intended . . . review[] for abuse of discretion;” “As the APA does not expressly allow review . . . we must presume that [the President’s] actions are not subject to its requirements.” *Franklin*, at 800–01. Also, the clear statement rule is a natural extension of the longstanding constitutional avoidance canon. The rule uniformly sidesteps the specific constitutional issue created when federal statutes are applied to the President—that is, potential disruption of the proper balance of power between the branches of government. The *Franklin* court clearly explained that Congress must expressly signal its intent to include the President in generally applicable statutes. *Id.*

[. . .]

Applicant Details

First Name	Nicholas
Middle Initial	S
Last Name	Monico
Citizenship Status	U. S. Citizen
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Contact Phone Number	(814)853-5495

Applicant Education

BA/BS From	Kent State University
Date of BA/BS	May 2020
JD/LLB From	Duquesne University School of Law
	http://www.duq.edu/law/
Date of JD/LLB	May 13, 2023
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	Duquesne Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Duquesne Appellate Moot Court Board

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Specialized Work Experience **Bankruptcy**

Recommenders

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McKown, Martin
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Michaels, Lauren
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Nicholas S. Monico
114 North South Drive
Pittsburgh, PA 15237

March 24, 2023

The Hon. Jamar K. Walker
U.S. District Court for the E.D. of VA
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a third-year law student at Thomas R. Kline School of Law of Duquesne University. I write to apply for a clerkship in August 2024, after I have completed my clerkship with Chief Judge Frank Santoro.

It would be an honor to continue serving the Norfolk community as your clerk. Following my time in the courts, I intend to practice white collar criminal law and corporate bankruptcy in the Eastern District of Virginia. Your career prosecuting white collar crime before taking the bench would maximize my learning experience relevant to my career goals, and I am confident our mutual interests would allow me to meaningfully contribute to the discharge of your duties.

Please find enclosed my resume, a writing sample, transcripts, and letters of recommendation. Additionally, the following people will provide a reference on my behalf:

The Hon. Jeffery A. Deller
U.S. Bankruptcy Court for the W.D. of PA
Judge_Jeffery_Deller@pawb.uscourts.gov
(412)644-4710

Prof. Wesley Oliver, Esq.
Associate Professor – Duquesne Law
oliverw@duq.edu
(617)909-9849

Samuel L. Grego, Esq.
Shareholder – Dickie, McCamey, & Chilcote, P.C.
SGreg@dmclaw.com
(412)281-7272

I hope to have the opportunity to interview with you. Thank you for your time and consideration.

Respectfully,

Nicholas S. Monico
Juris Doctor Candidate 2023

Nicholas S. Monico

260 West York Street, Apt. 4150, Norfolk, VA 23510 • (814)853-5495 • monicon@duq.edu

EDUCATION

Thomas R. Kline School of Law of Duquesne University, Pittsburgh, PA

Juris Doctor, May 2023

GPA: 3.74/4.00 (Rank: 7/113)

Activities: Duquesne Law Review, Appellate Moot Court Board, Western Pennsylvania Bankruptcy American Inn of Court

Honors: Magna Cum Laude; American Bankruptcy Law Journal Prize; ACBF Bankruptcy Judges' Memorial Scholarship Fund Award; CALI Awards – Civil Procedure and Drafting I, Criminal Procedure, Evidence; William & Mary William B. Spong Jr. Invitational Moot Court Tournament Round of Sixteen; WVU National Energy & Sustainability Moot Court Competition Semi-Finalist

Kent State University, Kent, OH

Bachelor of Business Administration, May 2020

Major: Finance (Minor: Economics)

Activities: Varsity Wrestling Team, Financial Managers Association

Honors: NCAA Division I Academic All-Mid-American Conference Team (2017–2018)

EXPERIENCE

U.S. Bankruptcy Court for the E.D. of VA, Norfolk, VA

Law Clerk to the Hon. Frank Santoro, Chief Judge, Anticipated Aug. 2023–Aug. 2024

U.S. Bankruptcy Court for the W.D. of PA, Pittsburgh, PA

Judicial Extern to the Hon. Jeffery Deller, Jan. 2023–Apr. 2023

Dickie, McCamey & Chilcote, P.C., Pittsburgh, PA

Summer Law Clerk, May 2022–Aug. 2022

- Researched and drafted memorandum for matters in various practice areas including bankruptcy, commercial disputes, medical malpractice, insurance defense, and criminal defense.
- Assisted in calculating damages for a defamation suit that resulted in a substantial judgement.

PA Office of Attorney General; Financial Enforcement Section, Pittsburgh, PA

Legal Extern, Aug. 2021–Nov. 2021

- Researched and drafted memorandum regarding legal issues arising from creditor collection efforts of Pennsylvania agencies.

U.S. Bankruptcy Court for the W.D. of PA, Pittsburgh, PA

Judicial Intern to the Hon. Gregory Taddonio, Jun. 2021–Jul. 2021

Spalding/Emig Company, Kent, OH

Research Analyst, May 2019–Jan. 2021

- Researched commercial real estate to support property appraisals for various purposes including tax litigation, market value assessment, and private interests.

INTERESTS

- Data analytics and coding, fitness, cooking, walking my dog, golf, traveling abroad, and spending time outdoors.

(/StudentSelfService/)

Nicholas Steven Monico

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Advising Transcript

Student Information

Degree Awarded:

Institution Credit

Transcript Totals

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Nicholas Steven
Monico

Curriculum Information

Primary Curriculum : Juris Doctor

Program

JD School of Law

College

Thomas R. Kline
School of Law

Major and
Department

Juris Doctor Day, Law

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Academic Transcript

Degree Awarded:

Awarded Juris Doctor	Degree Date 05/13/2023	Institutional Honors Magna Cum Laude
Program JD School of Law	College Thomas R. Kline School of Law	Major Juris Doctor Day

Institution Credit

Term : Fall 2020

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	101	LA	Contracts I	A	3.000	12.000	
LAWS	107	LA	Civ.Pro.and Drafting I	A+	3.000	12.000	
LAWS	109	LA	Property I	A-	3.000	11.010	
LAWS	111	LA	Torts I	B+	3.000	9.990	
LAWS	136	LA	Legal Research & Writing I	A-	3.000	11.010	
LAWS	154	LA	Legal Skills	P	1.000	0.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	15.000	56.010	3.734
Cumulative	16.000	16.000	16.000	15.000	56.010	3.734

Term : Spring 2021

Academic Standing

Good Standing

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Academic Transcript

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	102	LA	Contracts II	A	3.000	12.000	
LAWS	103	LA	Criminal Law	B+	3.000	9.990	
LAWS	108	LA	Civil Procedure II	A+	2.000	8.000	
LAWS	110	LA	Property II	A-	3.000	11.010	
LAWS	112	LA	Torts II	A	2.000	8.000	
LAWS	137	LA	Legal Research & Writing II	A-	2.000	7.340	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	15.000	15.000	15.000	15.000	56.340	3.756
Cumulative	31.000	31.000	31.000	30.000	112.350	3.745

Term : Fall 2021

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	105	LA	Crim.Proc:The Police Function	A+	3.000	12.000	
LAWS	113	LA	Constitutional Law I	A-	2.000	7.340	
LAWS	167	LA	Business Associations	A	3.000	12.000	
LAWS	530	LA	DLR, Jr. Staff	P	2.000	0.000	I
LAWS	700	LA	Externship	P	3.000	0.000	I
LAWS	C692	LA	Government Externship Seminar	P	0.000	0.000	
LAWS	C787	LA	Appellate Moot Court I Course	P	1.000	0.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	14.000	14.000	14.000	8.000	31.340	3.917
Cumulative	45.000	45.000	45.000	38.000	143.690	3.781

Term : Spring 2022

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	114	LA	Constitutional Law II	C+	3.000	6.999	
LAWS	530	LA	DLR, Jr. Staff	P	1.000	0.000	I

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Academic Transcript

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	557	LA	Energy Regulation	A-	3.000	11.010	
LAWS	C500	LA	Appellate Moot Court Competiti	P	2.000	0.000	I
LAWS	C521	LA	Evidence	A	3.000	12.000	
LAWS	C564	LA	Bankruptcy	A+	3.000	12.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	15.000	15.000	15.000	12.000	42.009	3.500
Cumulative	60.000	60.000	60.000	50.000	185.699	3.713

Term : Fall 2022

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	119	LA	Sales	B+	2.000	6.660	
LAWS	576	LA	Coding for Lawyers	A+	3.000	12.000	
LAWS	621	LA	State Courts & St Constitutions	A-	1.000	3.670	
LAWS	C19	LA	Professional Responsibility	A	3.000	12.000	
LAWS	C450	LA	Secured Transactions	A-	3.000	11.010	
LAWS	C589	LA	Appellate Practice & Procedure	A	2.000	8.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	14.000	14.000	14.000	14.000	53.340	3.810
Cumulative	74.000	74.000	74.000	64.000	239.039	3.734

Term : Spring 2023

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAWS	620	LA	Federal Courts	A-	3.000	11.010	
LAWS	700	LA	Externship	P	3.000	0.000	I
LAWS	C500	LA	Appellate Moot Court Competiti	P	2.000	0.000	I
LAWS	C581	LA	White Collar Crime	A-	2.000	7.340	
LAWS	C710	LA	Judicial Externship Seminar	P	0.000	0.000	
PCHD	789	LA	XR-Applied Legal Analytics&AI	A	3.000	12.000	

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Academic Transcript

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	13.000	13.000	13.000	8.000	30.350	3.793
Cumulative	87.000	87.000	87.000	72.000	269.389	3.741

Transcript Totals

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	87.000	87.000	87.000	72.000	269.389	3.741
Total Transfer	0.000	0.000	0.000	0.000	0.000	0.000
Overall	87.000	87.000	87.000	72.000	269.389	3.741

6/1/23, 2:09 PM


Academic Transcript

12/22/2020

Academic Transcript

810873114 Nicholas S. Monico
Dec 22, 2020 07:37 am

Academic Transcript

 This is not an official transcript. Courses which are in progress may also be included on this transcript.

To print the entire transcript, right click and then select Print.

Information for Nicholas S. Monico
Kent State ID #: **810873114**
[Institution Credit](#) [Transcript Totals](#)

Transcript Data

STUDENT INFORMATION

Name : Nicholas S. Monico
Birth Date: 03/11/1998

Curriculum Information

DECLARED PROGRAM(S):

Bachelor of Business Admin

College: College of Business Admin
Campus: Kent Campus
Major and Department: Finance, Finance
Minor: Economics

***Transcript type: Advising is NOT Official ***

DEGREE(S) AWARDED:

Awarded: Bachelor of Business Admin **Degree Date:** May09, 2020

Curriculum Information

College: College of Business Admin
Campus: Kent Campus
Major: Finance
Minor: Economics
DEGREE COMMENT: DEGREE GPA: 3.431

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2016

College: College of Business Admin
Major: Finance
Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
BUS	10123	Kent Campus	UG	EXPLORING BUSINESS	A	3.000	12.000	
COMM	15000	Kent Campus	UG	INTRO TO HUMAN COMMUNICATION	B+	3.000	9.900	
ENG	11011	Kent Campus	UG	COLLEGE WRITING I	B	3.000	9.000	
MATH	11010	Kent Campus	UG	ALGEBRA FOR CALCULUS	B+	3.000	9.900	
PEB	11426	Kent Campus	UG	VS TRAINING AND CONDITIONING	S	1.000	0.000	
PHY	11030	Kent Campus	UG	7 IDEAS THAT SHOOK UNIVERSE	A	3.000	12.000	
UC	10097	Kent Campus	UG	DKS: FIRST YEAR EXPERIENCE: COLLEGE OF BUSINESS	A	1.000	4.000	

12/22/2020

Academic Transcript

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	16.000	56.800	3.550
Cumulative:	17.000	17.000	17.000	16.000	56.800	3.550

Unofficial Transcript

Term: Spring 2017

College: College of Business Admin
Major: Finance

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
CLAS	21404	Kent Campus	UG	THE GREEK ACHIEVEMENT	A	3.000	12.000	
ECON	22060	Kent Campus	UG	PRINCIPLES OF MICROECONOMICS	A-	3.000	11.100	
ENG	21011	Kent Campus	UG	COLLEGE WRITING II	A-	3.000	11.100	
MATH	11012	Kent Campus	UG	INTUITIVE CALCULUS	C	3.000	6.000	
MIS	24053	Kent Campus	UG	COMPUTER APPLICATIONS	C	3.000	6.000	
PEB	11425	Kent Campus	UG	VARSITY SPORTS	S	1.000	0.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	15.000	46.200	3.080
Cumulative:	33.000	33.000	33.000	31.000	103.000	3.322

Unofficial Transcript

Term: Fall 2017

College: College of Business Admin
Major: Finance

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
ACCT	23020	Kent Campus	UG	INTRO TO FIN ACCOUNTING	B+	3.000	9.900	
CLAS	21405	Kent Campus	UG	THE ROMAN ACHIEVEMENT	A-	3.000	11.100	
ECON	22061	Kent Campus	UG	PRINCIPLES OF MACROECONOMICS	B-	3.000	8.100	
FIN	26074	Kent Campus	UG	LEGAL ENVIRONMENT OF BUSINESS	A	3.000	12.000	
MIS	24163	Kent Campus	UG	PRINCIPLES OF MANAGEMENT	B-	3.000	8.100	
PEB	11426	Kent Campus	UG	VS TRAINING AND CONDITIONING	S	1.000	0.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	15.000	49.200	3.280
Cumulative:	49.000	49.000	49.000	46.000	152.200	3.308

Unofficial Transcript

Term: Spring 2018

College: College of Business Admin
Major: Finance

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
ACCT	23021	Kent Campus	UG	INTRO TO MGR ACCOUNTING	C+	3.000	6.900	
BSCI	10002	Kent Campus	UG	LIFE ON PLANET EARTH	A	3.000	12.000	
BSCI	10003	Kent Campus	UG	LAB EXPERIENCE IN BIOLOGY	A	1.000	4.000	
HED	13510	Kent Campus	UG	WIN COMB:HTH AND TEAMWORK	A	1.000	4.000	

12/22/2020

Academic Transcript

MIS	24056	Kent Campus	UG	FUND-BUSINESS STATISTICS	B-	3.000	8.100
MKTG	25010	Kent Campus	UG	PRINCIPLES OF MARKETING	A-	3.000	11.100
PEB	11425	Kent Campus	UG	VARSITY SPORTS	S	1.000	0.000
PSYC	11762	Kent Campus	UG	GENERAL PSYCHOLOGY	B	3.000	9.000

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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Current Term:	18.000	18.000	18.000	17.000	55.100	3.241
Cumulative:	67.000	67.000	67.000	63.000	207.300	3.290

Unofficial Transcript

Term: Fall 2018

Term Comments: TRANSFER MODULE COMPLETED 12/16/2018

College: College of Business Admin

Major: Finance

Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
BUS	30062	Kent Campus	UG	ADV PROFESSIONAL DEVELOPMENT	B+	3.000	9.900	
ECON	32040	Kent Campus	UG	INTER MICROECON THEO AND APPL	W	3.000	0.000	
FIN	36051	Kent Campus	UG	THE FINANCIAL SYSTEM	A-	3.000	11.100	
FIN	36053	Kent Campus	UG	BUSINESS FINANCE	A-	3.000	11.100	
THEA	11000	Kent Campus	UG	THE ART OF THE THEATRE	B	3.000	9.000	

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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Current Term:	15.000	12.000	12.000	12.000	41.100	3.425
Cumulative:	82.000	79.000	79.000	75.000	248.400	3.312

Unofficial Transcript

Term: Spring 2019

College: College of Business Admin

Major: Finance

Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
ECON	32025	Kent Campus	UG	MONEY, CREDIT AND BANKING	A	3.000	12.000	
FIN	36054	Kent Campus	UG	INTERMEDIATE CORPORATE FINANCE	A	3.000	12.000	
FIN	36059	Kent Campus	UG	INTERMEDIATE INVESTMENTS	B+	3.000	9.900	
FIN	36061	Kent Campus	UG	PRINCIPLES OF REAL ESTATE	B+	3.000	9.900	
MIS	34060	Kent Campus	UG	OPERATIONS MANAGEMENT	B+	3.000	9.900	

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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Current Term:	15.000	15.000	15.000	15.000	53.700	3.580
Cumulative:	97.000	94.000	94.000	90.000	302.100	3.356

Unofficial Transcript

Term: Fall 2019

College: College of Business Admin

Major: Finance

Additional Standing: President's List

Subject	Course	Campus	Level	Title	Grade	Credit	Quality	R
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12/22/2020

Academic Transcript

						Hours	Points
ECON	42081	Kent Campus	UG	URBAN ECONOMICS	A	3.000	12.000
FIN	46059	Kent Campus	UG	FINANCIAL POLICY - WRITING INTENSIVE	A	3.000	12.000
FIN	46064	Kent Campus	UG	INTERNATIONAL BUSINESS FINANCE	A	3.000	12.000
FIN	46192	Kent Campus	UG	INTERNSHIP IN FINANCE	A	3.000	12.000
MKTG	45060	Kent Campus	UG	INTERNATIONAL MARKETING	A	3.000	12.000

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	60.000	4.000
Cumulative:	112.000	109.000	109.000	105.000	362.100	3.448

Unofficial Transcript

Term: Spring 2020

Term Comments: Significant disruption due to COVID-19 pandemic
College: College of Business Admin
Major: Finance

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
ECON	32041	Kent Campus	UG	INTER MACRO THEO AND ECON POL	B-	3.000	8.100	
ECON	42075	Kent Campus	UG	INTERNATIONAL ECON RELAT	Y	3.000	0.000	
FIN	46054	Kent Campus	UG	FINANCIAL RISK MANAGEMENT	B	3.000	9.000	
MGMT	44285	Kent Campus	UG	INTG BUS POLICY/STRATEGY	A	3.000	12.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	12.000	12.000	12.000	9.000	29.100	3.233
Cumulative:	124.000	121.000	121.000	114.000	391.200	3.431

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	124.000	121.000	121.000	114.000	391.200	3.431
Total Transfer:	0.000	0.000	0.000	0.000	0.000	0.000
Overall:	124.000	121.000	121.000	114.000	391.200	3.431

Unofficial Transcript

RELEASE: 8.7.1



600 FORBES AVENUE
PITTSBURGH, PA 15282
TEL 412.396.6300
www.duq.edu/law

March 31, 2023

Dear Judge Walker:

I am writing regarding Nicholas Monico, who I understand has applied for a judicial clerkship in your chambers. My first position out of law school was a judicial clerkship, so I know from first-hand experience the tremendous value of a judicial clerkship, and I encourage you to consider Nick.

I am a professor at the Duquesne University School of Law, and Nick was in my first-year civil procedure course. Not only did Nick do extremely well on the exam, earning the highest grade in the class, he also regularly asked thoughtful questions and volunteered in class.

After his first year, Nick was thinking about transferring. He approached me for advice, and we talked at length on several occasions about the various dynamics affecting his decision. I found Nick to be very mature and thoughtful during these discussions—he's a young man who knows himself and has a very good perspective.

Nick decided to remain at Duquesne (to my delight), and asked me to be his advisor for his law review article. I have carefully reviewed his article and it is excellent—among the best student papers I've ever seen. He writes well and his ideas were sophisticated.

In sum, I think you will find Nick to be a real asset in your chambers, as well as a pleasure to work with. Thank you, and please let me know if I can provide any additional information.

Very truly yours,

A handwritten signature in blue ink that reads 'Steven Baicker-McKee'.

Steven Baicker-McKee
Joseph A. Katarincic Chair of Legal Process and Civil Procedure
Associate Professor of Law
Duquesne University School of Law
600 Forbes Ave.
Pittsburgh, PA 15282
(412) 396-2258
baickermckees@duq.edu

Education for the Mind, Heart and Spirit



Martin McKown, J.D.

600 Forbes Avenue
Room 134, Legal Writing Center
Pittsburgh, PA 15282
duq.edu/law

March 20, 2022

Re: Nicholas Monico; Letter of Recommendation

Your Honor:

Please accept this letter of recommendation on behalf of Nicholas Monico, a second-year student at Duquesne University School of Law. I understand that Mr. Monico is applying to be a law clerk in your chambers. I wholeheartedly support his decision to pursue such a position, and I offer my highest recommendation.

In my capacity as a faculty advisor for the law school's Appellate Advocacy Program, I have come to know Mr. Monico very well. This year he was selected to compete in the National Energy and Sustainability Moot Court Competition—one of the most prestigious competitions in the country—based on his demonstrated academic merit and a competitive tryout process. As I watched his team prepare from the competition over the course of months, it became apparent that Mr. Monico's research ability is second to none, and he clearly articulates legal concepts both orally and in writing. His hard work in preparing for the competition was recognized when he and his teammates emerged as semifinalists, ranking in the top four of forty-four total teams.

In addition to his strong legal skill set and work ethic, Mr. Monico has emerged as a leader amongst his classmates. Mr. Monico is honest and trustworthy, has a strong sense of integrity, and is well-respected by the faculty. He forms relationships with others quickly, and his peers enjoy working with him. He is collaborative, collegial, dependable, adaptable, mature, and professional in all matters.

Mr. Monico is also a student in my Energy Regulation class this semester (Spring 2022). Mr. Monico's understanding of the legal concepts we have studied has far surpassed that of his peers. He has never missed a class, has never missed a deadline, participates when appropriate, and is always conscientious and polite. He often leads classroom discussions and takes time to help struggling students understand difficult concepts.

In short, Mr. Monico has proven himself to be an asset to the law school. Should he be given the opportunity to work in your chambers, he will undoubtedly be an asset there too.

Having worked through the course of my career as a law clerk, a congressional staffer, a mediator, an arbitrator, a practitioner, and an adjunct professor of law, I have gained much insight into the qualities required of becoming an exceptional attorney. I assure you that Mr. Monico possesses these qualities, and I recommend him to you without reservation. Should you have any questions about Mr. Monico or this recommendation, please do not hesitate to contact me at mckownm@duq.edu or 903-372-1171 (mobile).

Sincerely,

A handwritten signature in blue ink that reads 'Martin McKown'.

Martin McKown
Adjunct Professor of Law

1251 Waterfront Place
Pittsburgh, PA 15222
Telephone: (412) 235-9072
LMichaels@attorneygeneral.gov

March 28, 2023

Via OSCAR

Re: Nicholas Monico

Dear Judge Walker:

I am writing to enthusiastically recommend Nicholas Monico for the law clerk position in your chambers.

My name is Lauren Michaels, and I am a Deputy Attorney General for the Commonwealth of Pennsylvania. I supervised Mr. Monico during his internship with the Office of Attorney General, Financial Enforcement Section, during the fall semester of 2021. As a former law clerk myself, I understand the importance of excellent research and legal writing skills. I have personally supervised approximately eight student interns, and Mr. Monico was easily one of the top legal writers I have had the pleasure of working with.

During his tenure with our office, Mr. Monico was assigned several challenging research projects on the Bankruptcy Code, Pennsylvania state law, and pending legislation. He surprised me with how easily he grasped difficult concepts, and he consistently provided our office with quality written work products that were both clear and concise. Mr. Monico was always very insightful; he could politely discuss legal concepts and identify legal issues as well as a second-year associate.

I strongly believe Mr. Monico would be a welcome addition to your chambers. Should you have any questions regarding Mr. Monico's qualifications, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Michaels". The signature is written in dark ink and is positioned above the typed name and title.

Lauren Michaels
Deputy Attorney General
Financial Enforcement Section

Writing Sample:

The following writing sample is a memorandum I wrote for Judge Jeffery Deller while serving as an extern during spring 2023. Judge Deller expressly authorized use as a writing sample within the judiciary, and the memorandum is entirely my own work product.

**UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA
THE HONORABLE JEFFERY A. DELLER'S CHAMBERS
FEBRUARY 23, 2023**

SUBJECT: Debtor's Redemption Rights Relating to Prepetition Tax Sales and Bankruptcy Under Pennsylvania Law

TO: The Hon. Jeffery A. Deller
Juliann Haynes-Held, Law Clerk

FROM: Nicholas Monico
Extern

This memorandum analyzes a debtor's redemption rights relating to pre-petition tax sales and bankruptcy under Pennsylvania foreclosure law.

BRIEF ANSWER

Under Pennsylvania law, to redeem residential property sold at a tax sale, a taxpayer must file a redemption petition prior to expiration of a nine-month statutory redemption period. 53 Pa. Stat. Ann. § 7293(a). When a timely filing of a redemption petition is made, parties are restored to the positions they had prior to the sale, including all liens and encumbrances that were divested by the sale and the sheriff's deed. § 7923. After filing, the redeemer has a superior right of possession, and the purchaser is left with the right to receive money paid on the redemption. *Id.* The nine-month period continues to run after the filing of a chapter 13. *See In re Gonzalez*, 550 B.R. 711, 726 (Bankr. E.D. Pa. 2016); *In re Christiano*, 605 B.R. 1, 7-8 (Bankr. D. Conn. 2019). The nine-month redemption period allowed under Pennsylvania law can be extended by up to sixty days if the taxpayer files a chapter 13 before the nine-month period lapses. *Gonzalez*, 550 B.R. at 711; *Christiano*, 605 B.R. at 2.

Courts disagree as to whether a debtor can treat a redemption payment as a claim under a chapter 13 plan. *See, e.g., Gonzalez*, 550 B.R. at 719-723; *In re Richter*, 535 B.R. 735, 746-47, n.15 (Bankr. C.D. Cal. 2015). Courts that disallow treatment of redemption payments as a claim reason that the right of redemption is an asset of the debtor, not a payment obligation. *Richter*, 535 B.R. at 747-49, n.16. Courts that allow treatment of redemption payments as claims liken it to the mortgagor/mortgagee relationship in title theory states. *Gonzalez*, 550 B.R. at 722-23. Allowing the redemption payments to be treated as a claim is more consistent with Pennsylvania law. In states where an owner retains substantial property rights during the redemption period, the redemption/purchaser relationship is virtually indistinguishable from the mortgagee/mortgagor relationship.

ANALYSIS

I. Redemption Rights in Prepetition Tax Sales Under Pennsylvania Law.

When a debtor files for bankruptcy, state or non-federal law determines the scope and nature of a debtor's property interests and the debts subject to adjustment. See Butner v. United States, 440 U.S. 48, 54-55 (1979); In re Brannon, 476 F.3d 170, 176 (3d Cir. 2007). After defining debtor's property interest using state law, courts apply federal bankruptcy law to determine the extent to which the Bankruptcy Code permits debtors to modify pre-existing relationships. See generally United States v. Energy Res. Co., 495 U.S. 545, 549 (1990) (bankruptcy courts have "broad authority to modify creditor-debtor relationships"). Thus, to determine a chapter 13 debtor's pre-petition redemption rights, courts must (1) determine the nature of a debtor's relationship to the property and purchaser, and (2) determine the extent which that relationship can be modified pursuant to the Bankruptcy Code.

A. Redemption under Pennsylvania foreclosure law.

Pennsylvania law provides that a municipal taxing authority may subject a tax delinquent property to a tax sale. 53 P.S. §7283(a). A tax sale purchaser takes title to the property "clear of all claims, liens, mortgages, ground rents, charges and estates," with any proceeds being distributed according to the priority of remaining claims. Id. Although a tax sale purchaser takes "absolute title of the property sold, free and discharged of all the tax and municipal claims, liens, mortgages, ground rents, charges and estates of whatsoever kind," the purchaser's absolute title is "*subject . . . to the right of redemption as provided by law.*" Id. (emphasis added). The Pennsylvania statute governing the redemption is § 7293.

Section 7293(a) provides that the owner of a residential property may redeem after a tax sale if the property was continuously occupied for the ninety days prior to the sale and remained occupied after acknowledgement of the sheriff's deed. The redemption period lasts for nine-months from the date of the acknowledgement of the sheriff's deed. Id. To exercise the redemption right, the owner of the property must file a redemption petition and pay the tax sale purchaser the amount bid at the sale plus other costs incidental to the sale. § 7293(b).

When a redemption petition is filed, delivery of the amount and restoration of the property owner's title is subject to the control of the court. See City of Philadelphia v. Chin, 535 A.2d 110-12 (Pa. Super. Ct. 1987) (finding that the court must determine whether the redemption petition was timely filed and whether the owner is eligible to exercise the right). Because the owner has nine months to file the petition, and the petition must be reviewed by courts, only the filing of the petition must occur within the nine-month period. See § 7293(b); U.S. Bank Nat'l Ass'n v. Parker, 962 A.2d 1210, 1212 (Pa. Super. Ct. 2008); Chin, 535 A.2d at 112-13. Payment of the redemption amount may be made after the expiration of the statutory deadline. Parker, 962 A.2d at 1212; Chin, 535 A.2d at 112-13. Once a property is redeemed, all the parties are restored to the positions they had prior to the tax sale, including all liens and encumbrances that were divested by the sale and sheriff's deeds. See City of Philadelphia v. Miller, 126 A.2d 812, 814 (Pa. Super. Ct. 1956).

During the redemption period, the purchaser's bundle of property rights is materially limited by an owner's right of redemption. See Associates Fin. Servs. Co. v. O'Dell, 417 A.2d 604, 607 (Pa. 1980); Burns v. PA Dep't of Correction, 544 F.3d 279, 287-88 (3d Cir. 2008) (discussing the bundle of rights metaphor). Significantly, the property owner retains an equitable interest in the property, including a superior right to possession. In re Hammond, 420 B.R. 633 (Bankr. W.D. PA 2009) (Fitzgerald, J.). Therefore, a purchaser at a tax sale "acquires an inchoate, defeasible title which does not change the status of the property owner until the redemption period has passed." Id. at 635 (citing Appeal of Singer, 7 A. 800, 801 (Pa. 1887)). The purchaser has no claim to possession or ejectment against an owner during the redemption period; rather, the purchasers only absolute interest in the property until the redemption period is expired is the right to receive money paid on redemption. Id.; Shalemiller v. McCarty, 55 Pa. 186, 188 (Pa. 1867); Easton v. Sulkin, 19 Pa. D. & C. 152 (Pa. Com. Pl. 1993).

B. The automatic stay and possible sixty day extension from the date of the order for relief.

The running of the nine-month statutory redemption period is not tolled by the automatic stay. Christiano, 605 B.R. at 8; See Canney v. Merchs Bank (In re Frazer), 284 F.3d 362, 370-73 (2d Cir. 2002) (surveying caselaw regarding tolling of a redemption periods). The purpose of the automatic stay is to stay creditor activity, not debtor opportunity. See 11 U.S.C. § 362. Debtor opportunity is addressed by § 108(b), which provides:

Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of-

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 60 days after the order for relief.

11 U.S.C. §108(b).

"The automatic stay prevents only certain affirmative acts taken by a creditor, and the running of time is not one of those acts." Canney, 284 F.3d at 372. Redemption is an affirmative act, but it must be taken by the debtor or the Trustee, not a creditor. Id. Therefore, if a debtor holds an unexpired right of redemption on the petition date, the debtor has until the period allowed under state law or sixty days from the petition date, whichever is later, to redeem. Id.; see also In re Curley, 572 B.R. 622, 626 (Bankr. E.D. La. 2017)

II. Treatment of Redemption Payments as a Claim in a Chapter 13.

Courts disagree as to whether a debtor is permitted to effect a redemption through a chapter 13 plan. See Gonzalez, 550 B.R. at 719-723; Richter, 525 B.R. at 747-49, n.16. Courts that allow treatment as a claim reason that redemption payments are indistinguishable from mortgages, which are unquestionably claims under chapter 13. 11 U.S.C. § 1322(b)(2); Gonzalez, 550 B.R. at 722. Courts that disallow the practice reason that the claim is an asset of the debtor rather than a claim. Id. at 720

Courts allowing redemption payments to be treated as claims reason that the effect of redemption payment is no different than what occurs when a debtor fails to satisfy any conventional secured claim, exactly like a mortgage on a residential real property. Id. Resemblance of redemption claims to mortgages is most apparent in title theory states like Pennsylvania. Randal v. Jersey Mortg. Inc. Co., 158 A. 865 (Pa. 1932); Commerce Bank v. Mountain View Village, Inc., 5 F.3d 34, 38 (3d Cir. 1993). In title theory states, satisfaction of mortgage debt effects a reconveyance of title to the mortgagee; similarly, payment of redemption amount restores title to the former record owner. 53 P.S. § 7923; Gonzalez, 550 B.R. at 723. Courts allowing treatment as a claim conclude that “the consequence of non-payment of the redemption amount (the debtor’s loss of his or her remaining property interests in the subject real property) renders the purchaser a creditor holding a bankruptcy claim under 11 U.S.C. § 101(5).” If the foreclosure process is not complete at the time a bankruptcy petition is filed, the debtor is in the same position as the owner of a property subject to a non-recourse lien. Gonzalez, 505 B.R. at 723, n.31 (compiling courts following this reasoning); In re Francis, 489 B.R. 262, 268 (Bankr. N.D. Ga. 2013).

Courts that disallow treatment of redemption payments as a claim reason that the right of redemption is an asset of the debtor rather than a payment obligation. See Richter, 525 B.R. at 747. Because a debtor who chooses not to redeem has no liability to the tax purchaser, the debtor is simply foregoing the opportunity to buy additional property. See, e.g., United States ex rel. Block v. Aldrich (In re Rigden), 795 F.2d 727, 731 (9th Cir 1986) (finding that a statutory right of redemption is estate property that can be sold by a Trustee). These courts further reason that redemption cannot be treated as a claim because the purchaser has no right to redemption payment; instead, the right of redemption is an unexpired, unexercised option to purchase real property. Richter, 525 B.R. at 747; 11 U.S.C. §§ 365(g), 502(g)(1). Finally, there is no legal authority suggesting that a Pennsylvania state court would approve a redemption petition that provided for payment over a sixty month period.

Under Pennsylvania law, redemption payments should be allowed as claims in chapter 13 plans. While both interpretations have merit, and all courts who examine the issue comment that it is a close one, the view that redemption claimants are indistinguishable from mortgage claimants is more consistent with Pennsylvania law. Importantly, Pennsylvania property owners retain substantial property rights during the redemption period, and, unlike other real estate purchase options, the debtor seeks to effect recovery of ownership interest they already had before. This distinction is not grounded in the text of the bankruptcy code, but it provides an objective basis to distinguish between analogous relationships. Allowing redemption payments as claims is further consistent with the fundamental purpose of chapter 13: to allow individuals to prevent the loss of their residences through a repayment plan.

In summary, when a property is subject to a tax sale in Pennsylvania, the owner has nine-months to file a petition for redemption. If the owner files chapter 13 before the expiration of that period, they have until the end of the nine-month period, or sixty days after the order for relief, whichever is later, to file for redemption. The purchaser of the property will become a claimant in the chapter 13 and have the right to the redemption payment through the sixty month chapter 13 plan.

Applicant Details

First Name	Christopher
Last Name	Moore
Citizenship Status	U. S. Citizen
Email Address	cam9163@nyu.edu
Address	<div> Address Street 110 W 3rd Street, DA-411B City New York State/Territory New York Zip 10012 </div>
Contact Phone Number	3188344162

Applicant Education

BA/BS From	Tulane University
Date of BA/BS	May 2021
JD/LLB From	New York University School of Law
	https://www.law.nyu.edu
Date of JD/LLB	May 22, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Harper, Brandon
Brandon.Harper2@usdoj.gov
Simson, David
david.simson@nyls.edu
310-966-0685
Friedman, Barry
barry.friedman@nyu.edu
212-998-6293

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Chris Moore
110 W. 3rd St.
New York, NY 10012
318-834-4162
christopher.moore@law.nyu.edu

June 12, 2023

The Honorable Jamar Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a second-year student at NYU School of Law and Executive Editor of the NYU Law Review. I am writing to apply for a 2024-2025 term, or any subsequent term, clerkship in your chambers.

I am particularly interested in a clerkship with you because of your previous experience as an Assistant United States Attorney. As you will see from my enclosed resume, I spent last summer interning at the United States Attorney's Office for the Southern District of New York. Moreover, as a Research Assistant to Professor Barry Friedman, I conducted extensive research about state analogues to the Federal Third-Party Search doctrine. I believe these experiences, along with my role on Law Review, have prepared me for a clerkship in your chambers.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. My writing sample is a paper I wrote for my Corporate Crime and Financial Misleading Seminar examining the validity of the right to control theory of fraud. Also enclosed are letters of recommendation from Professors Barry Friedman and David Simson. Brandon Harper, Assistant United States Attorney for the Southern District of New York, has also agreed to serve as a reference.

If you have any questions, please feel free to contact me at the above address and telephone number. Thank you for considering my application.

Respectfully,
/s/
Chris Moore

CHRISTOPHER MOORE

110 West 3rd Street, New York, NY 10012 | 318-834-4162 | christopher.moore@law.nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Candidate for J.D., May 2024

Honors: *Law Review*, Executive Editor
Dean's Award Scholarship- *partial tuition scholarship based in part upon academic merit*
Sudler Family Fellowship

Activities: Black Allied Law Students Association, Member
Prosecution Legal Society, Member
Government Civil Litigation Clinic, SDNY (Fall 2022)
Policing Project Legal Fellow (Fall 2023)

TULANE UNIVERSITY, SCHOOL OF LIBERAL ARTS, New Orleans, LA

Bachelor of Arts in History & Political Science, May 2021

Honors: Dean's List (Spring 2018-Spring 2020)

Activities: Alpha Phi Alpha Fraternity Inc., President
Mock Trial Team, Competitor
TIDES (Tulane Interdisciplinary Experience Seminar), Peer Mentor
TEDxTulane, Curator

EXPERIENCE

DEBEVOISE & PLIMPTON, New York, NY

Summer Associate, Summer 2023

U.S ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK, New York, NY

Legal Intern, Criminal Division, Summer 2022

Performed legal research and drafted trial court motions, briefs, and legal memoranda regarding a variety of criminal proceedings. Closely collaborated in trial preparation; investigated evidence, evaluated complex legal issues, and interviewed and corresponded with witnesses.

PROFESSOR BARRY FRIEDMAN, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Research Assistant, Summer 2022

Conducted extensive legal research and writing in the area of Criminal Procedure, including an analysis of the privacy policy implications of the Supreme Court's ruling in *Carpenter v. United States*.

GREATER NEW ORLEANS INC., New Orleans, LA

Policy and External Affairs Intern, August 2018 - May 2019

Researched and developed talking points for policies related to economic development including early childhood education, higher education, and pension reform. Examined the impact of international tariffs on local industries.

OFFICE OF COUNCIL MEMBER JASON WILLIAMS, New Orleans, LA

Legislative Intern, June - August 2018

Collaborated in preparing statements for the Councilman to present at City Council meetings. Met with constituents concerning a variety of issues. Proposed policies focused on increasing youth involvement in government.

OFFICE OF THE MAYOR OF NEW ORLEANS, New Orleans, LA

Executive Office Assistant Intern, September 2017 - May 2018

Researched previous press stories for various media pitches. Assisted in preparation for mayoral interviews.

ADDITIONAL INFORMATION

Enjoy cooking, swimming, and reading in my free time. Worked as a camp counselor for two summers while in college. Volunteered with an organization that provides mentorship to fatherless youth in college.

Name: Christopher A Moore
 Print Date: 05/31/2023
 Student ID: N16685405
 Institution ID: 002785
 Page: 1 of 1

New York University
 Beginning of School of Law Record

Current	AHRS	EHR
Cumulative	15.0	15.0
	45.0	45.0

Fall 2021

School of Law				
Juris Doctor				
Major: Law				
Lawyering (Year)	LAW-LW 10687	2.5	CR	
Instructor: David Simson				
Torts	LAW-LW 11275	4.0	B	
Instructor: Mark A Geistfeld				
Procedure	LAW-LW 11650	5.0	B+	
Instructor: Helen Hershkoff				
Contracts	LAW-LW 11672	4.0	B	
Instructor: Richard Rexford Wayne Brooks				
1L Reading Group	LAW-LW 12339	0.0	CR	
Instructor: Christopher Jon Sprigman				
	AHRS	EHR		
Current	15.5	15.5		
Cumulative	15.5	15.5		

Spring 2023

School of Law				
Juris Doctor				
Major: Law				
Constitutional Law	LAW-LW 11702	4.0	B	
Instructor: Peter Milo Shane				
Property	LAW-LW 11783	4.0	B	
Instructor: David Jerome Reiss				
Introduction to Accounting and Finance	LAW-LW 12337	3.0	CR	
Instructor: April Klein				
The Elements of Criminal Justice Seminar	LAW-LW 12632	2.0	A-	
Instructor: Preet Bharara				
	AHRS	EHR		
Current	13.0	13.0		
Cumulative	58.0	58.0		
Staff Editor - Law Review 2022-2023				

End of School of Law Record

Spring 2022

School of Law				
Juris Doctor				
Major: Law				
Lawyering (Year)	LAW-LW 10687	2.5	CR	
Instructor: David Simson				
Legislation and the Regulatory State	LAW-LW 10925	4.0	B	
Instructor: Adam B Cox				
Criminal Law	LAW-LW 11147	4.0	A-	
Instructor: Ekow Nyansa Yankah				
1L Reading Group	LAW-LW 12339	0.0	CR	
Instructor: Christopher Jon Sprigman				
Criminal Procedure: Police Practices	LAW-LW 12697	4.0	B+	
Instructor: Barry E Friedman				
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR	
	AHRS	EHR		
Current	14.5	14.5		
Cumulative	30.0	30.0		

Fall 2022

School of Law				
Juris Doctor				
Major: Law				
Complex Federal Investigations Seminar	LAW-LW 11517	2.0	B-	
Instructor: Katherine R Goldstein				
Evidence	LAW-LW 11607	4.0	B+	
Instructor: Erin Murphy				
Government Civil Litigation Externship- Southern District	LAW-LW 11701	3.0	B	
Instructor: Seungkun Kim				
Government Civil Litigation Externship - Southern District Seminar	LAW-LW 11895	2.0	B+	
Instructor: Monica Pilar Folch				
Corporate Crime and Financial Misdealing: Legal and Policy Analysis Seminar	LAW-LW 12243	2.0	A-	
Instructor: Jennifer Hall Arlen				
Research Assistant	LAW-LW 12589	2.0	CR	
Summer 2022 Research Assistant				
Instructor: Joseph P Facciponti				

NAME: Moore, Christopher A
STUDENT ID: 320001302
BIRTH DAY: August 10

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COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
UNDERGRADUATE ACADEMIC RECORD					2018 Spring				
Secondary Schools: Caddo Parish Magnet High Sch. 06/01/2017 Higher Education Institutions: Louisiana St Univ Shreveport Louisiana St Univ Shreveport Degrees Awarded: 05/22/2021 Bachelor of Arts Liberal Arts School Major 1: History Major 2: Political Science Honors: cum laude					COMM-2650 Mass Communication Law A 3.00 12.00 LATN-1020 Intermediate Latin B 4.00 12.00 HISC-2020 History of China since 1800 A 3.00 12.00 POLS-2010 Scope/Methods Poli Sci B+ 3.00 9.99 MUSC-1000 Fundamentals of Theory A 3.00 12.00 HISU-2640 US Foreign Rltns Since WWII A 3.00 12.00 CURRENT: EHRS 19.0 QHRS 19.0 QPTS 69.99 GPA 3.684 CUMULATIVE: 49.0 36.0 123.33 3.426				
2017 Fall					2018 Summer				
ADMITTED PROGRAM: Liberal Arts School Bachelor of Arts HISU-1420 US Hist 1865 To The Present CR 3.00 ENGL-1010 Writing CR 4.00 HISE-1220 Emerg Cont World 1789- CR 3.00 POLA-2100 American Government CR 3.00 TIDE-1010 Ldrshp, Pol, Powr, Change A 1.00 4.00 TIDE-1890 Service learning: TIDE 1010 S (0.00) MATH-1110 Probability & Statistics I C 3.00 6.00 POLI-2500 International Relations A 3.00 12.00 LATN-1010 Elementary Latin C+ 4.00 9.32 HISM-2200 History of Islam to 1400 A- 3.00 11.01 HISE-1910 Napoleon in Russia A- 3.00 11.01 CURRENT: EHRS 30.0 QHRS 17.0 QPTS 53.34 GPA 3.138 CUMULATIVE: 30.0 17.0 53.34 3.138					POLA-3280 Southern Politics A 3.00 12.00 CURRENT: EHRS 3.0 QHRS 3.0 QPTS 12.00 GPA 4.000 CUMULATIVE: 52.0 39.0 135.33 3.470				
					2018 Fall				
					SRVC-4890 Special Topics S (0.00) POLS-4560 Internship A 3.00 12.00 INTERNSHIP COMM-2230 Interpersonal Communicat A 3.00 12.00 HISU-2610 The Old South A 3.00 12.00 LATN-2030 Intro To Literature B- 4.00 10.68 POLA-4160 Political Parties A 3.00 12.00 POLA-4140 Urban Politics A 3.00 12.00 HISL-2820 Modern Brazil A 3.00 12.00 CURRENT: EHRS 22.0 QHRS 22.0 QPTS 82.68 GPA 3.758 CUMULATIVE: 74.0 61.0 218.01 3.574				

* NOT APPLIED TO CURRENT PROGRAM
++ INCLUDES INITIAL STATISTICS

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7/25/2022

UNDERGRADUATE ACADEMIC RECORD

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COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS	
2019 Spring					
PSYC-1001	Psychology Beyond Classroom	S	(0.00)		
PSYC-1000	Introductory Psych	A	3.00	12.00	
POLA-4010	Picking Judges	A-	3.00	11.01	
HISE-6350	Crime/Punish Hanov Engl	A-	3.00	11.01	
POLC-2300	Comparative Politics	A	3.00	12.00	
HISU-2620	The New South, 1865-Present	A	3.00	12.00	
HISE-3260	Putin's Russia	A	3.00	12.00	
		EHRS	QHRS	QPTS	GPA
CURRENT:		18.0	18.0	70.02	3.890
CUMULATIVE:		92.0	79.0	288.03	3.646
2019 Fall					
PHYS-1010	Great Ideas in Science &Tech	B	4.00	12.00	
POLA-4170	The American Presidency	B+	3.00	9.99	
POLA-4150	Elections in America	A	3.00	12.00	
LGST-4200	LSAT Review	S	1.00		
POLI-4530	American Foreign Policy	A-	3.00	11.01	
HISA-3250	Jews, Christians, Muslims	A	3.00	12.00	
		EHRS	QHRS	QPTS	GPA
CURRENT:		17.0	16.0	57.00	3.563
CUMULATIVE:		109.0	95.0	345.03	3.632
2020 Spring					
HISU-6911	America on Trial	A	3.00	12.00	
DANC-1950	Jazz Dance I	A	2.00	8.00	
THEA-2100	Fundamentals of Acting	A	3.00	12.00	
POLI-3011	Civil -Military Relations	A-	4.00	14.68	
GLSP-2010	Intro to the Legal System	A	3.00	12.00	
		EHRS	QHRS	QPTS	GPA
CURRENT:		15.0	15.0	58.68	3.912
CUMULATIVE:		124.0	110.0	403.71	3.670

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS	
2020 Fall					
EBIO-1015	Diversity of Life Lab	S	1.00		
SOWK-1000	Trauma! A Survey Course	A	3.00	12.00	
EBIO-1010	Diversity of Life	S	3.00		
HISU-3000	Historical Methods: HISU 3642	A-	1.00	3.67	
HISU-3642	US War in Vietnam	A-	3.00	11.01	
HISU-6911	Grateful Dead & the 1960s	A	3.00	12.00	
		EHRS	QHRS	QPTS	GPA
CURRENT:		14.0	10.0	38.68	3.868
CUMULATIVE:		138.0	120.0	442.39	3.687
2021 Spring					
SOWK-2100	Family Trauma-A Survey Course	S	3.00		
SOWK-2510	Making Meaning of Trauma	A	3.00	12.00	
HISC-6210	The PRC: China under Communism	A	3.00	12.00	
GLSP-3020	Legal Research	S	3.00		
		EHRS	QHRS	QPTS	GPA
CURRENT:		12.0	6.0	24.00	4.000
CUMULATIVE:		150.0	126.0	466.39	3.702
DEGREE REQUIREMENTS COMPLETED FOR Bachelor of Arts					
** END OF UNDERGRADUATE RECORD **					

UNDERGRADUATE ACADEMIC RECORD

May 22, 2023

Your Honor:

Please accept this enthusiastic letter of recommendation for Chris Moore to serve as a law clerk in your chambers. I had the pleasure of working with Chris during his 2022 summer internship in the U.S. Attorney's Office and have found him to be bright, energetic, hardworking, and collaborative. I believe that Chris will make a terrific lawyer and law clerk.

I serve as an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Southern District of New York. I am currently on detail to the Office of the Deputy Attorney General in the Department of Justice. I had the pleasure of clerking for both a United States District Judge and a United States Circuit Judge after law school.

I worked with Chris on numerous cases during his summer in the U.S. Attorney's Office, including during the research stage, briefing, and trial. He always demonstrated an exceptional work ethic and he routinely produced high-quality work. For example, Chris's research and writing were instrumental in helping to craft a response to a motion for compassionate release. The issues in the case were complex, and the factual record was extensive. Nevertheless, Chris provided strong research about the relevant legal questions and offered excellent assistance during the brief drafting phase. In another instance, Chris provided invaluable support on a case that was headed toward trial. He helped the team dig deep into the factual record and gave excellent feedback during several opening statement and closing argument moots. Chris even stayed late and came in early as the case approached trial (entirely on his own and without being asked). He very quickly became an indispensable member of the team.

There is no question based on the summer I spent working with Chris that he is passionate about the law, motivated to by doing what is right, and genuinely excited about the prospect of serving as a law clerk. Of all the legal interns, paralegals, and other staff at the U.S. Attorney's Office with which I have worked, Chris easily ranks in the top 10%. He is intelligent, hardworking, dedicated to the mission, and a strong critical thinker. Chris can analyze complex legal issues, distill those issues into the important points, and clearly articulate legal analyses through his writing. He no doubt possesses the skills necessary to be an effective law clerk.

Thank you for your time and for considering Chris's application. It was a pleasure to work with Chris and I am delighted to offer this recommendation. Please do not hesitate to contact me with any questions. I can be reached by email at brandon.harper2@usdoj.gov.

Sincerely,

/s/ Brandon D. Harper

Brandon D. Harper



David Simson
Associate Professor of Law

185 West Broadway
New York, NY 10013
Cell: (310) 966-0685
Email: david.simson@nyls.edu

June 12, 2023

RE: Christopher Moore, NYU Law '24

Your Honor:

I am writing to strongly support Christopher Moore in his candidacy for a judicial clerkship. I recently transitioned to an Associate Professor position at New York Law School, but until May of 2022 I was an Acting Assistant Professor of Lawyering at NYU Law School. There, Chris was a student in my Lawyering class of 32 students during the 2021-22 school year. The work-intensive nature of the Lawyering course and the individualized engagement with students that it involves allowed me to get to know Chris and his work better than other law school classes. In my course, Chris demonstrated great professionalism and resilience, an impressive trajectory in his lawyering skills development, and a kind, empathetic, and generous personality that made him a valued contributor to groups small and large. I believe that all of these attributes will make him a valued and effective member of chambers and thus I strongly support his clerkship application.

As background for my interactions with Chris, the Lawyering Program is a key part of the first-year curriculum at NYU Law School. It asks students to engage in a wide variety of tasks that include, but go significantly beyond, the traditional legal research and writing assignments that most law schools emphasize. In addition to completing such research and writing assignments, students learn how to navigate class discussions and in-class simulations of various types, give peer feedback in small critique conferences, interview and counsel mock clients, participate in mock mediations and negotiations, practice their professional emailing skills, and prepare for and present an oral argument with external judges. The goal in exposing students to all of these challenges is to introduce them to the complex, interactive, context-sensitive, and interpretive work required to excel in legal practice.

Some of these tasks came more naturally to Chris while others required an adjustment to new and at times unintuitive ways of doing things. But what made Chris stand out in my class is that he tackled all of these tasks with a combination of attributes that I believe will make him an excellent clerk: A very strong work ethic, dedication to continuously improve, and resilience in the face of challenges; as well as an uncanny ability to combine that work ethic with a kind, humble, and warm personality dedicated to contributing deeply to the success of the many teams of which he was a part.

I believe that the attribute that will perhaps most allow Chris to do excellent work and make a positive impact both as a clerk and throughout his career is his professionalism and resilience. In my class, Chris most tangibly (though certainly not exclusively) demonstrated this professionalism and resilience in the way in which he handled adjusting to the unique

Christopher Moore, NYU Law '24

June 12, 2023

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conventions and demands of legal writing. In my years of teaching legal writing, I have found that the idiosyncratic conventions of legal writing—especially when combined with the additional idiosyncrasies of the demands of each individual legal writing professor—can be very challenging for some students to adjust to, especially students who were trained and highly skilled in other writing approaches prior to law school. Chris experienced these challenges in my course, but what I believe will make him a great clerk is not that he did, but how he handled them. Chris once shared with me that in college he had done work as a writing tutor, and in his initial assignments I could tell that he had a strong skill set for types of writing such as what I would expect in policy analysis and the like. What did not always seem to come naturally for Chris was taking this kind of writing and adjusting it to the very specific and unforgiving structure of legal argument that I taught in my class. Thus, in early assignments, Chris worked through some struggles with things such as ordering different kinds of information within the structure of a legal argument, how specifically to integrate and marshal legal authority in different parts of a legal argument, and the like.

Chris was, of course, not unique in experiencing such struggles, but he did stand out in the way in which he responded to them. Rather than, as many other students did, being somewhat combative and resisting the extensive and detailed feedback that I provided to each student, Chris embraced the challenge with a positive mindset. For the first major writing assignment, for example, Chris was the only student who not only reached out to speak with me in person multiple times to take advantage of the opportunity to clarify his understanding and approach, but he also completed extra iterations of the assignment so that he could practice what to him was still a somewhat unintuitive way of making arguments. Because my class was not graded, each student had the option of reaching out to me for feedback as often as they thought helpful, but precisely because my class was not graded, almost no students actually did so. Chris did, recognizing how important it would be for his future development as a lawyer, and he did so with skill and determination. Rather than haggling with me (as some of his colleagues did) over why he wasn't right in the way he wrote after all, Chris asked for feedback, exposed his work to further critique, improved his craft, and repeated the process again and again. This is what I consider a hallmark of a successful lawyer—a dedication to honing one's craft throughout one's career—and Chris showed to me that for him this is not just an unavoidable but annoying demand of the job, but the way he approaches his life. This will serve him very well as a clerk, as well as in his career in general, in my opinion. That he did all of this while navigating the innumerable stresses and anxieties of the first year of law school makes this even more remarkable.

As a result, the trajectory of Chris's skills development over the course of the year in my class was truly impressive. Chris's written work product went from a source of struggle to being in the stronger half of the class by the time of his final writing assignment—a jump that I do not remember any other of my students making. I am, moreover, confident that Chris has continued this trajectory since. Thus, I believe that not only will Chris be able to deliver high-quality work product from Day 1 of his clerkship, but more importantly still, that he will actively seek out the innumerable learning opportunities that a judicial clerkship provides and that he will take skilled advantage of them to continue to improve his craft and contributions

Christopher Moore, NYU Law '24

June 12, 2023

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every single day. To me, this is the kind of person that I would want to work with and I hope you strongly consider Chris's application in this light.

In addition to having the kind of professionalism and resilience described above, Chris is also kind, empathetic, and generous, which made him a valued contributor to groups small and large in my course. I distinctly remember how Chris by random selection ended up being teamed up with two of the more challenging students in my course in what was a weeks-long simulation that involved various assignments ranging from interviewing to memo writing to client counseling. One of Chris's teammates was smart but struggled connecting interpersonally, and the other had decided to deprioritize my course yet was both in denial and combative about this fact. Chris worked hard to nevertheless ensure that his team worked as successfully as possible, and never deflected responsibility to his teammates. Thus, in the group's simulated client interview, it was clear that one of Chris's teammates had a hard time empathizing with the client in what was an emotionally charged employment discrimination case, and the other was not very well prepared. Chris did what he could to make the team do its best nevertheless. He took on the opening part of the interview, and my notes from watching the interview repeatedly stress how Chris did a great job empathizing with the client, allowing the client to tell their story, and soliciting relevant information effectively. Chris also jumped in to fill gaps even in parts of the interview that were not technically "assigned" to him.

In the group feedback session, Chris still never called out his colleagues but instead focused on what the team could do better moving forward. This contrasted strongly with one of his colleagues, who instead asked me to work with other students in the future because he did not feel like he got along with the third teammate's personality. Once again, Chris was a true professional who was able to work across differences to ensure greater team success despite this involving both a stressful experience and a lot of work for him. In my view, this skill, too, will serve Chris well both as a clerk and as a lawyer—environments in which strong and (at times) difficult personalities abound and in which team success often depends on people with the skillset and professionalism that Chris demonstrated throughout my course.

Lastly, I believe that Chris is very well-suited to succeed as a clerk because he has a clear vision for his career and how clerking fits within it. Chris has developed a particular interest in prosecutorial work, and I know from both our conversations and his other materials that he has worked diligently to seek out and take advantage of opportunities to prepare himself for success in this competitive arena—whether it be working as a research assistant, writing projects, internships, or student organizations. Chris has thought clearly about how being exposed to, and contributing to, the daily work of the judiciary will help him understand not only the work of an institution that he can expect to work closely with as a prosecutor, but also the many different possible approaches that prosecutors and other lawyers take in court and what he can learn from them to improve his own craft still further.

When the above is taken together, I hope that a clear picture emerges of Chris as a person who is thoughtful (a fact which he also demonstrated in class discussions of many

Christopher Moore, NYU Law '24

June 12, 2023

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kinds), highly skilled, hard-working, dedicated to and capable of improving his craft no matter the obstacles, and yet kind, generous, empathetic, and a true team player. While this and the above thoughts can of course only provide a small window into the mosaic of reasons why I believe that Chris is an exceptional clerkship candidate. I hope, however, that they are still helpful in your decision-making process. Of course, if you have any questions or would like additional information, please do not hesitate to contact me at david.simson@nyls.edu or at (310) 966-0685.

Sincerely,

A handwritten signature in black ink, appearing to read "Simson", with a stylized, cursive script.

David Simson
Associate Professor of Law
New York Law School



Barry Friedman

Jacob D. Fuchsberg Professor of Law

Affiliated Professor of Politics

Director, Policing Project

40 Washington Square South, Rm. 317

New York, New York 10012-1099

Tel: (212) 998-6293

Fax: (212) 995-4030

barry.friedman@nyu.edu

Dear Judge,

I am writing on behalf of Chris Moore, who is applying to clerk in your chambers beginning any time after he graduates in the Spring of 2024. I have worked with Chris in a wide variety of capacities, and I'm a big fan. I strongly encourage you to consider him.

I first got to know Chris when he took my 1L Criminal Procedure elective. This was still during the pandemic, and no easy time, but Chris was a standout student. He participated frequently, he was always on top of the material, and he was equally consistently a spark of humor and grace. He did well on the exam, and I affirmatively was grateful to have him in class. He also came to office hours, and showed real interest in the material.

Based on my experience with Chris, I asked him to work as my RA, as he has done for some time. He worked on a variety of projects, from the development of the right to carry arms and its relationship to policing, to projects about whether and how law enforcement should be able to collect and store data on individuals. I saw his work from initial research and memo writing to footnoting. Chris is a hard worker who takes the job seriously. His work was always on time and helpful to the projects. He had real insight at times.

I yet again asked Chris to work with me, interviewing for a position as a Fellow at the Policing Project that I founded, which works to bring democratic accountability to policing. My team recently enthusiastically chose him as a Fellow, and I am happy that our professional relationship will continue.

Chris's long term interests are to be a prosecutor, and to work in a large law firm before that. From the time he arrived here, Chris has interests in being a prosecutor. What is admirable is that he has pursued learning and experiences on all sides of the criminal legal system. That is classic Chris—to see things from all sides, and want to understand them that way.

Chris has had an incredible career here. He is an Executive Editor for the Law Review, treasurer for the Prosecution Legal Society, and been involved in BALSAs. As is apparent, he is one of those people that dives into things with enthusiasm, and given my experience with him I'm sure he is received enthusiastically wherever he goes.

Chris is going to be a good law clerk. He is a hard worker and deeply engaged in all he does. I'm particularly impressed with how far along his writing has come from his time as an RA. I just read a paper he wrote on Right to Control, and it was extremely clear. His efforts have paid off. He's smart and savvy both. He has spent time working with government, and that pragmatic side shows in all he does.

It doesn't take long knowing Chris to realize he is a special and stellar person, engaging, kind, funny, caring, and deeply responsible. I like him a great deal.

I am pleased to recommend Chris to you, and urge you to interview him. Please do not hesitate to contact me if you have any questions.

Best regards,



Barry Friedman

The Right to Control: A Step Too Far?

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<i>Brief for Petitioner at 15, Ciminelli v. United States</i> , 142 S.Ct. 2901 (2022) (No. 21-1170)	10
<i>Carpenter v. United States</i> , 484 U.S. 19 (1987)	3, 9
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<i>McNally v. United States</i> , 483 U.S. 350 (1987)	7
<i>Transcript of Oral Argument at 34, Ciminelli v. United States</i> , 142 S.Ct. 2901 (2022) (No. 21-1170) s.....	10, 11
<i>United States v. Johnson</i> , 945 F.3d 606 (2d Cir. 2019)	7
<i>United States v. Al Hedaithy</i> , 392 F.3d 580 (3d Cir. 2004)	8
<i>United States v. Bunday</i> , 804 F.3d 558 (2d Cir. 2015)	3
<i>United States v. Bruchhausen</i> , 977 F.2d 464 (9th Cir. 1992)	8
<i>United States v. Catalfo</i> , 64 F.3d 1070 (7th Cir. 1995)	8
<i>United States v. Dinome</i> , 86 F.3d 277 (2d Cir. 1996)	6, 7
<i>United States v. Finazzo</i> , 850 F.3d 94 (2d Cir. 2017)	3
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<i>United States v. Gray</i> , 405 F.3d 227 (4th Cir. 2005)	7
<i>United States v. Henry</i> , 29 F.3d 112 (3d Cir. 1994)	8

<i>United States v. Johnson</i> , 939 F.3d 82 (2d Cir. 2019)	3
<i>United States v. Lebedev</i> , 932 F.3d 40 (2d Cir. 2019), cert. denied sub nom. Gross v. United States, — U.S. —, 140 S. Ct. 1224, 206 L.Ed.2d 219 (2020)	9
<i>United States v. Mittelstaedt</i> , 31 F.3d 1208 (2d Cir. 1994)	5, 6
<i>United States v. Percoco</i> , 13 F.4th 158 (2d Cir. 2021)	9
<i>United States v. Sadler</i> , 750 F.3d 585 (6th Cir. 2014)	7
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<i>United States v. Welch</i> , 327 F.3d 1081 (10th Cir. 2003)	7
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Statutes	
18 U.S.C. § 1341	2, 9
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Other	
Jennifer Bouriat, <i>The Right to Control Theory--What It Is, How It Is Used, and How to Defend Against It</i> , 44-OCT Champion 38, 38	2
Stephen F. Smith, <i>Overcoming Overcriminalization</i> , 102 J. Crim. L. & Criminology 537, 548 (2012) (describing how prosecutors make up their own notions of fraud)	8
Tai H. Park, <i>The "Right to Control" Theory of Fraud: When Deception Without Harm Becomes A Crime</i> , 43 Cardozo L. Rev. 135, 165 (2021)	7

I. Introduction

The Supreme Court is set to determine the validity of the right to control theory in *United States v. Ciminelli*. The theory is much maligned, and many in the legal community expect the Court to limit the application of the theory at the least, if not completely strike the theory down. This paper seeks to examine the validity of the theory and some questions that the Court must consider in deciding how to address the right to control. Ultimately, this paper argues that despite heavy, albeit justified, criticism of the theory, the Supreme Court should limit its use rather than abandon it completely.

II. United States v. Ciminelli

In 2012, Andrew Cuomo, New York Governor at the time, launched the “Buffalo Billion” initiative to develop the Buffalo area with \$1 billion in taxpayer funds. Alain Kaloyeros, the head of the College of Nanoscale Science and Engineering (“CNSE”), hired Todd Howe, a consultant and lobbyist with connections to the Cuomo administration.¹ Through Howe, Kaloyeros was charged with developing proposals for projects under the Buffalo Billion initiative. Howe had two construction-company clients: LPCiminelli, owned by Louis Ciminelli, and COR Development Company, owned by Steven Aiello and Joseph Gerardi.² A year after the initiative was announced, Kaloyeros and Howe began plotting to deliver the Buffalo Billion contracts to Howe’s clients.³ Despite Kaloyeros’ control over the initiative, Fort Schuyler Management Corporation (“FS”) was in charge of project selection.⁴

Interested parties were notified of the need for the project through request-for-proposals and were evaluated by FS through a bidding process.⁵ Kaloyeros and Howe used two methods to avoid FS’s ordinary bidding process. First, Kaloyeros proposed the issuance of two RFPs, which designated the successful bidders as the “preferred developer” for the region, giving the preferred developer the opportunity to negotiate with FS before FS had even designated a specific project.⁶ Second, Kaloyeros and Howe tailored these RFPs to benefit LPCiminelli and COR development. Howe, Aiello, Gerardi, and Ciminelli created a list of qualifications for preferred developers that matched the characteristics of the two companies.⁷ Despite the imposition of a “blackout period” where communications between interested contractors and issuers of RFPs were only allowed in the open, the parties communicated in private.⁸ In response to public scrutiny, Kaloyeros modified one of the RFP qualifications and claimed that the prior qualifications was a “typographical error.”⁹

¹ Brief for Appellee, at 7, *United States v. Ciminelli*, No. 18-2990 (2d Cir. Aug. 29, 2019).

² *Id.* at 35.

³ *Id.*

⁴ *Id.* at 30.

⁵ *Id.* at 32.

⁶ *Id.* at 33.

⁷ *Id.*

⁸ *Id.* at 42.

⁹ *Id.*

At the same time that Kaloyeros guaranteed Ciminelli that his company would win the contract he allowed Ciminelli to choose the second preferred developer.¹⁰ While Kaloyeros was not involved in the official process of evaluating bids, he never disclosed his involvement with the companies.¹¹ As a result of their efforts, Ciminelli, and the bidder that he favored, became the preferred developers in Buffalo. LPCiminelli was awarded a \$750 million construction project.¹² Despite completing the projects satisfactorily, Kaloyeros, Ciminelli, Aiello, and Gerardi were indicted for conspiracy to commit wire fraud in 2017. Ciminelli was convicted a year later and sentenced to 28 months of imprisonment. After losing in the Second Circuit, Ciminelli appealed to the Supreme Court and is now awaiting a decision.

III. Federal Mail and Wire Fraud Statutes

The federal mail and wire fraud statutes are nearly identical—the only difference between them is the means of perpetrating the fraud. The essential elements of both mail and wire fraud are (1) an intent to defraud; (2) a fraudulent scheme to obtain money or property involving material misrepresentations; and (3) use of the mails or wires to further the scheme.”¹³ The scheme to defraud does not have to be successful or completed for a prosecution under the statute to be successful. Thus, the prosecution does not have to show that the victims of the scheme were actually injured, only that the defendant contemplated injury to the victim. A common example of a fraud prosecution under these statutes is “phishing.” This occurs when person A emails people with a false story about why they need money immediately and person B sends them \$100. A fraud prosecution here would be successful, as the email soliciting money with a false story satisfies the intent to defraud, scheme to obtain money or property, and use of wires elements of the wire fraud statute. Due to the proliferation of electronic technology, these statutes apply to a wide range of behavior. As a result, they have become a favorite of white-collar prosecutors. However, there is a class of fraud cases that are pushing the limits of this statute.

IV. The Right to Control

While most fraud prosecutions require a showing that the defendant injured the victim in their tangible money or property rights, there are some cases that focus on intangible property rights. The right to control theory is a theory of fraud prosecution in which the government argues that the defendant injured the victim of an intangible property right to economically valuable information by making a misrepresentation or withholding that information from the victim.¹⁴ This can still be proven even if the victim hasn’t suffered a pecuniary loss or an injury to a more traditional property right, such as loss of ownership or possession. This theory has become a

¹⁰ *Id.*

¹¹ *Id.* at 45.

¹² *Id.* at 46.

¹³ 18 U.S.C. § 1341; 18 U.S.C. § 1343

¹⁴ Jennifer Bouriat, *The Right to Control Theory--What It Is, How It Is Used, and How to Defend Against It*, 44-OCT Champion 38, 38 (explaining what the right to control theory is).

favorite of prosecutors because it allows deception in business dealings, that may otherwise go unpunished, to be prosecuted. However, not everyone is as happy about the theory's development as prosecutors. Critics frequently decry the doctrine as too broad and contend that it criminalizes a range of activity that Congress did not intend to capture through the federal fraud statutes. Before diving into the validity of the theory, it is helpful to outline in detail what elements the government must satisfy to successfully prosecute under the right to control theory.

A. The Elements of the Right to Control

Because the theory originated in, and is used most often in the Second Circuit, this Circuit's cases will form the basis for examining what the theory requires. In interpreting the fraud statutes, the Second Circuit has said that intangible rights can satisfy the property element under the mail and wire fraud statutes in certain circumstances.¹⁵ The intangible property at issue in right to control prosecutions is "potentially valuable economic information" and the resulting effect on the victim's control of assets.¹⁶ However, the government must still prove the traditional elements of fraud. The Second Circuit has defined those elements in a right to control prosecution as requiring that the government establish that the defendant, "(1) had an intent to defraud; (2) engaged in a fraudulent scheme to obtain money or property "involving material misrepresentations—misrepresentations that would naturally tend to influence or are capable of influencing the victim's decision-making, and (3) used the wire to further that scheme."¹⁷ Since the last element is uncomplicated, the first two will be examined in greater detail.

i. Intent to Defraud

The intent to defraud element, as applied in right to control cases, disregards whether the victim received the benefit of the bargain, and focuses on whether the defendant's deception affected the very nature of the bargain between the defendant and the victim.¹⁸ Fraudulent intent may be evident when "the false representations are directed to the quality, adequacy, or price of the goods themselves...because the victim is made to bargain without facts obviously essential in deciding whether to enter the bargain."¹⁹ The defendant can be liable for fraud, even when no contract was breached and the victim appeared to have received the full economic benefit of the deal, if the misrepresentation concerns a central part of the bargain that would have affected the parties' willingness to engage in the transaction.²⁰ The Second Circuit has further said that satisfying the intent to defraud element requires the government to show that the defendants,

¹⁵ See *Carpenter v. United States*, 484 U.S. 19, 25 (1987) (describing how the scope of mail fraud was not limited to tangible property rights).

¹⁶ *United States v. Finazzo*, 850 F.3d 94, 108 (2d Cir. 2017).

¹⁷ *United States v. Johnson*, 939 F.3d 82, 88 (2d Cir. 2019); *United States v. Bunday*, 804 F.3d 558, 569 (2d Cir. 2015).

¹⁸ *Johnson*, 939 F.3d at 89.

¹⁹ *Bunday*, 804 F.3d at 578.

²⁰ *Johnson*, 939 F.3d at 89.

“contemplated some actual, cognizable harm or injury to their victims.”²¹ Proving this when the focus of the scheme is intangible property is considerably more challenging than when it is tangible property or money. This is because it is not always clear that a defendant specifically contemplated harming the victim, rather than just trying to negotiate a better deal for themselves, by making false representations. Despite the difficulty, prosecutors have been able to satisfy this requirement by showing that the defendants’ misrepresentations exposed the victims to unexpected economic risks.²² This has also been shown when the defendants’ misrepresentations exposed the victim to penalties that do not seem monetary on the surface. This includes the possibility of reputational damage or the loss of goodwill in their industries.²³ Lastly, this can also be found when the misrepresentations impact the quality of goods or services that the victim bargains for.²⁴

ii. Material Misrepresentations

The second element that must be proved in a right to control prosecution is that the defendant engaged in a fraudulent scheme to obtain money or property involving material misrepresentations. As mentioned above, these are misrepresentations that would naturally tend to influence or are capable of influencing the victim’s decision-making.²⁵ A misrepresentation is material if it can “influence the intended victim.”²⁶ The court in *Johnson* instructs prosecutors that this requirement is different from the showing of fraudulent intent that requires demonstrating that the material misrepresentation must be “capable of resulting in tangible harm.”²⁷ Thus, however subtle the line between these two elements is, it is important not to conflate the two requirements.

B. Applications of the Right to Control

Now that the elements of the theory have been described, it is helpful to see how it has played out in actual cases. There are several situations where the right to control theory has been applied, some more logical than others. The first is where the defendant injures the victim after the fact by giving the victim less than they bargained for. Application of the theory in this instance is uncontroversial because it is obvious that the victim has lost money, goods, or other property because of the defendant’s scheme. As mentioned above, another way that harm is shown in right to control cases is when the defendant’s misrepresentations can expose the victim to unexpected economic risks. *United States v. Binda* and *United States v. Mittelstaedt* are examples of this.

²¹ *Finazzo*, 850 F.3d at 107.

²² *Binday*, 804 F.3d at 558.

²³ See *United States v. Schwartz*, 924 F.2d 410, 420 (2d Cir. 1991) (stating that the contemplation of harm requirement is satisfied if but-for defendants’ misrepresentations the victim would not have sold equipment to them); See also *United States v. Frank*, 156 F.3d 332, 335 (2d Cir. 1998) (evaluating how exposure to fines satisfies the contemplation of harm requirement).

²⁴ *Binday*, 804 F.3d at 571.

²⁵ *Johnson*, 939 F.3d at 88.

²⁶ *Id.*

²⁷ *Id.*

i. Unexpected Economic Risks

In *Binday*, the Second Circuit upheld wire and mail fraud convictions of insurance brokers under the right to control theory where they made misrepresentations in policy applications that carried greater risk to the insurers than the insurers were aware of and had bargained for.²⁸ The *Binday* defendants submitted false information on insurance applications to conceal the fact that the applications were for “stranger-oriented life insurance” (“STOLI”) policies, which are policies on individuals owned by a third-party investor who bets that the value of the policy's benefits upon the individual's death would exceed the premiums.²⁹ The insurance company prohibited the issuance of STOLI policies directly, but allowed an insured to resell the policy to an investor after it was issued.³⁰ At trial, the defendants conceded that they submitted applications with false information, but argued that they did not intend to inflict--and the insurers did not suffer--any cognizable harm. They argued that their deceit caused no differences “between the benefits reasonably anticipated by the insurers and what they actually received because there was no meaningful economic difference between STOLI and non-STOLI policies.”³¹ This was particularly true, according to defendants, because after the insurer issues non-STOLI policies, they are freely transferable. However, the Second Circuit rejected this argument because witnesses testified that STOLI policies had different economic characteristics and an overall expectation of reduced profitability, which the insurers would have considered in the price had they known the applications were for STOLI policies.³² Thus defendants' misrepresentations “went to an essential element of the agreement because the insurers' belief that they were issuing non-STOLI policies significantly informed the insurers' financial expectations.”³³

United States v. Mittelstaedt provides a useful example of where a prosecution under the right to control was not upheld. The defendant was a consulting engineer for two Long Island communities that used his position to influence the town planning boards' decisions regarding real estate projects that he had an undisclosed interest in.³⁴ The defendant argued that the district court erred in refusing to give a proposed charge that the undisclosed information must have placed the Village at an economic disadvantage.³⁵ Essentially, the defendant maintained that such concealed interest must have induced “the Village to purchase the property at a higher cost than it would have otherwise paid.”³⁶ The government argued that whether the towns suffered economic loss made no difference, “because the loss of the right to control the expenditure of public funds, through the loss of the ability to make a fully informed decision, is sufficient to constitute mail fraud.”³⁷ The court disagreed with the Government and ruled that “where an individual standing in a fiduciary

²⁸ *Binday*, 804 F.3d at 558.

²⁹ *Id.* at 565.

³⁰ *Id.*

³¹ *Id.* at 568-69.

³² *Id.* at 573.

³³ *Id.* at 574.

³⁴ *United States v. Mittelstaedt*, 31 F.3d 1208, 1210 (2d Cir. 1994).

³⁵ *Id.* at 1216.

³⁶ *Id.*

³⁷ *Id.* at 1217.

relation to another conceals material information that the fiduciary is legally obliged to disclose, that non-disclosure does not give rise to mail fraud liability unless the omission can or does result in some tangible harm.”³⁸ Liability is determined only after the government demonstrates that the concealed information affects the ultimate value of the deal or has some form of independent value.³⁹ This requires that the government show more than just that the deprivation of information might have impacted where public money is spent to prove, because this lack of information does not constitute tangible harm under the mail fraud statute.⁴⁰ For a successful prosecution in this case, the government had to establish that the purpose of the omission was to cause “actual harm to the village of a pecuniary nature or that the village could have negotiated a better deal for itself if it had not been deceived.”⁴¹ Because the government failed to establish this, the jury instructions were found erroneous because they allowed for a conviction of fraud when no tangible harm was caused by the defendant’s omissions.⁴²

While slightly different from the traditional theory of fraud prosecutions, these examples show that the use of the right to control theory presents little controversy in some instances. This is because the injury, of unexpected economic risks, is directly tied to information that the defendant withholds from the defendant. In *Binday*, a right to control prosecution makes sense because what the victim insurers care about most is not necessarily the up-front payment on the life insurance policy, but rather the significant economic risk that STOLI policies expose them to compared to non-STOLI policies. The misrepresentations made by the defendants affect both the insurers’ decisions to issue policies and the probable value that they will receive from these policies. This behavior should be captured under the fraud statutes--and the right to control does this by allowing the economic differences between the two policies to be shown as an economic harm. On the other hand, *Mittelstaedt* shows that the right to control theory has its limits by requiring that the defendant’s misrepresentation be tied to a loss of economic or pecuniary value.

ii. Unclear Relation to Economic Value

While *Mittelstaedt* appears to properly restrict the use of the right to control theory, this has not been the case. The theory has applied in instances where it is not apparent that the defendant’s misrepresentations affected the economic value of the deal to the defendant. In these cases, the court seems to be doing a lot of work to square them with *Mittelstaedt* holding. In *Dinome*, the defendant falsely stated his income to a bank to obtain a mortgage.⁴³ After being convicted of mail and wire fraud, the defendant argued on appeal that the jury instruction was at odds with *Mittelstaedt* because the instruction only stated that “the definition of property includes intangible property interests such as the right to control the use of one’s own assets. This interest is injured when a person is deprived of information he would consider valuable in deciding how

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 1218.

⁴³ *United States v. Dinome*, 86 F.3d 277 (2d Cir. 1996).

to use his assets.”⁴⁴ Despite the court’s recognition that this instruction was at odds with *Mittelstaedt*, it still upheld the instructions because the information withheld by the defendant significantly diminished the ultimate value of the mortgage to the bank.⁴⁵ While the outcome in *Dinome* is defensible because of the effect that the misrepresentation has on the value of the mortgage, it is part of a stream of decisions that has expanded the scope of the right to control in ways that many deem troublesome.⁴⁶ But the theory’s validity is not just being debated in law reviews. The federal circuits are divided on whether the theory is valid.

C. Circuit Split

While the Second Circuit was the birthplace of the theory, there has been a mixed reaction to the right to control theory among other circuits. Some circuits agree with the Second Circuit’s views on the theory, some disagree, and some have issued decisions that go both ways. The Eighth Circuit has upheld the right to control theory as valid, “We determine that the right to control spending constitutes a property right. This position draws support from the Supreme Court’s statement in *McNally* that there the jury instructions were flawed because the jury was not ‘charged that to convict it must find that the Commonwealth was deprived of control over how its money was spent.’”⁴⁷ The Tenth Circuit has similarly found that an intangible right to control in the fraud statutes, “[W]e have recognized the intangible right to control one’s property is a property interest within the purview of the mail and wire fraud statutes.”⁴⁸ The Fourth Circuit also agrees with the Second Circuit, “The Government need not prove that the victim suffered a monetary loss as a result of the alleged fraud; it is sufficient that the victim was deprived of some right over its property.”⁴⁹

However, there are several circuits that disagree with the Second Circuit’s views on the right to control theory. The Sixth Circuit is one of these circuits, “[The] right to control” is “not the kind of ‘property’ right safeguarded by the fraud statutes”; the fraud statute “is ‘limited in scope to the protection of property rights,’ and the ethereal right to accurate information doesn’t fit that description.” (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)).⁵⁰ The Ninth Circuit has also found that the right to control is not property under the fraud statutes, “the interest of the [victim] manufacturers in seeing that the products they sold were not shipped to the Soviet

⁴⁴ *Id.* at 284

⁴⁵ *Id.*

⁴⁶ *United States v. Viloski*, 557 Fed.Appx. 28, 34 (2d Cir. 2014) (summary order) (upholding a right to control prosecution because defendant’s kickbacks prevented the victim from obtaining a better deal for itself); *United States v. Johnson*, 945 F.3d 606 (2d Cir. 2019) (permitting a right to control prosecution because the defendant’s misrepresentations about style of doing the deal affected the price of the exchange); *United States v. Gatto*, 986 F.3d 104 (2d Cir. 2021) (allowing a right to control prosecution because bribes could have exposed victims to penalties); see generally Tai H. Park, *The “Right to Control” Theory of Fraud: When Deception Without Harm Becomes A Crime*, 43 Cardozo L. Rev. 135, 165 (2021).

⁴⁷ *United States v. Shyres*, 898 F.2d 647, 652 (8th Cir. 1990).

⁴⁸ *United States v. Welch*, 327 F.3d 1081, 1108 (10th Cir. 2003).

⁴⁹ *United States v. Gray*, 405 F.3d 227, 234 (4th Cir. 2005).

⁵⁰ *United States v. Sadler*, 750 F.3d 585, 591 (6th Cir. 2014).

Bloc in violation of federal law is not ‘property’ of the kind that Congress intended to reach in the wire fraud statute.”⁵¹

Lastly, both the Seventh and Third Circuits have issued decisions that both agree and disagree with the Second Circuit’s view on the right to control theory. The Seventh Circuit has recognized the victim’s “right to control its risk of loss.”⁵² However, the court has found that a university’s “right to control” who receives scholarships is not a cognizable property right under the fraud statutes: “[A] university that loses the benefits of [the] amateurism [of an athlete] ... has been deprived only of an intangible right” not cognizable under the fraud statutes.⁵³ The Third Circuit has also issued contradictory opinions on the theory. In one case, the court contrasted “[p]urely intangible rights” with “rights in intangibles which nevertheless constitute ‘property.’”⁵⁴ However, the court later affirmed that under the mail and wire fraud statutes, property rights do not need to be tangible and can include intangible forms of property.⁵⁵ Lastly, the court has distinguished *Zauber* by stating that the deprivation of property in question related to the “right to exclusive use of [the] property,” rather than the right to control its property in a manner different than the defendant.⁵⁶

V. What the Court Must Consider

The Court must consider several factors when they decide the right to control theory’s fate this summer. This includes the potential for overcriminalization, whether the right to control is a form of property, and the potential impact of limiting the theory. Each of these factors are explored below.

A. The Potential for Overcriminalization

While the theory has been subject to many criticisms, two of the biggest arguments concern the implications that the theory has on criminal justice: that it captures behavior that it should not and that it does not provide potential defendants with notice. Some argue that this case is an example of overcriminalization wherein prosecutors and lower courts are to blame for their expansive definitions of the criminal statutes.⁵⁷ These critics argue that intangible rights were never intended to be covered by Congress through the fraud statutes.⁵⁸ The main issue here is that through broad interpretations of the statute, prosecutors can impose their own beliefs and values

⁵¹ *United States v. Bruchhausen*, 977 F.2d 464, 468 (9th Cir. 1992).

⁵² *United States v. Catalfo*, 64 F.3d 1070, 1077 (7th Cir. 1995).

⁵³ *United States v. Walters*, 997 F.2d 1219, 1226 (7th Cir. 1993).

⁵⁴ *United States v. Zauber*, 857 F.2d 137, 142 (3d Cir. 1988).

⁵⁵ *United States v. Henry*, 29 F.3d 112, 113-14 (3d Cir. 1994).

⁵⁶ *United States v. Al Hedaithy*, 392 F.3d 580, 603 (3d Cir. 2004).

⁵⁷ See Brief for Law Professors as Amicus Curiae at 16, *Ciminelli v. United States*, 142 S.Ct. 2901 (2022) [hereinafter *Law Professors*] (blaming prosecutors for the perpetuation of unfair criminal cases); see also Stephen F. Smith, *Overcoming Overcriminalization*, 102 J. Crim. L. & Criminology 537, 548 (2012) (describing how prosecutors make up their own notions of fraud).

⁵⁸ Smith, *supra* note 57, at 550-53.

on citizens who engage in unsavory behavior.⁵⁹ This leads to a second criticism against the right to control, and prosecutions for other intangible rights: lack of notice. Since prosecutors have used the fraud statutes in this way, it prevents the public from being on notice for what behaviors are a violation of the law.⁶⁰

These arguments are persuasive as this prevents citizens from making informed decisions about how to conduct business dealings. There are many instances where defendants have been prosecuted for actions that they believed were within the bounds of the law. Moreover, the Second Circuit's allowance that the fraudulent intent element can be satisfied by showing that the defendant's actions exposed the victim to possible economic harm seems particularly unreasonable. While not true in every instance, exposing a counterparty to some economic risk is a natural part of doing business. Some may argue that this deters criminal behavior and encourages potential white-collar criminals to be especially careful in their negotiations, but the theory in its current form is too divergent to provide proper notice to deter these actors.⁶¹ Thus, the dangers of overcriminalization will only be improved through a clarification of the right to control in *Ciminelli*.

B. Is the Right to Control a Form of Property?

To clarify the right to control, the Supreme Court must answer whether it is a form of property itself or whether it is incidental to property ownership. Much of the tension surrounding the right to control is focused on this question. If it is considered to be property, then fraud prosecutions under the theory would be valid. However, if the right to control is merely an incident of property ownership it would not so clearly fit within the fraud statute's definition of property. The Second Circuit has issued decisions that have gone both ways. The circuit has justified this doctrine by emphasizing that a defining feature of most property is the right to control the asset in question.⁶² But in *United States v. Percoco*, the court said that the prosecution can satisfy the money or property element by showing that the defendant, "through the withholding or inaccurate reporting of information that could impact on economic decisions, deprived some person or entity of potentially valuable information."⁶³ Thus, one's property interests are harmed when a scheme denies him or her the right to control his or her assets by depriving him or her of information necessary to make discretionary economic decisions. This seems to apply equally to tangible and intangible assets, as the Second Circuit explained that previous cases "did not limit the scope of § 1341 to tangible as distinguished from intangible property rights."⁶⁴ Thus, in some right to control prosecutions, the intangible property at issue is potentially valuable economic information and its

⁵⁹ Law Professors, *supra* note 57, at 17.

⁶⁰ Park, *supra* note 46, at 196.

⁶¹ *Id.*

⁶² *United States v. Lebedev*, 932 F.3d 40, 48 (2d Cir. 2019) (internal quotation marks and alteration omitted), *cert. denied sub nom. Gross v. United States*, — U.S. —, 140 S. Ct. 1224, 206 L.Ed.2d 219 (2020).

⁶³ *United States v. Percoco*, 13 F.4th 158, 170 (2d Cir. 2021), *cert. granted sub nom. Ciminelli v. United States*, 213 L. Ed. 2d 1114, 142 S. Ct. 2901 (2022).

⁶⁴ *Carpenter v. United States*, 484 U.S. 19, 25 (1987).

resulting effect on the control of assets; but in some cases the right to control is merely a way of getting to the tangible property rights at issue. This inconsistency has contributed significantly to the currently confused state of the doctrine.

Ciminelli offers a convincing argument for how the right to control has been improperly considered by the Second Circuit and why it should not be classified as property under the fraud statutes. Ciminelli argues that the right to control wrongly “allows for conviction on a showing that the defendant, through the withholding or inaccurate reporting of information that could impact on economic decisions, deprived some person or entity of potentially valuable economic information.”⁶⁵ Ciminelli further claims that Second Circuit decisions have been inconsistent at best and that the conception of the right to control as a property right is at odds with traditional conceptions of property rights.⁶⁶ Since no traditional property interest is infringed by the withholding of complete and accurate economic information and because no right is deprived solely by withholding information, the right to control theory fails to state a traditional property fraud.⁶⁷ This is a view that has garnered support among those discussing this issue.⁶⁸

Ciminelli, and his supporters, make a much more convincing argument than the Second Circuit. As an intangible asset, the right to control does not seem to fit into the conception of property that Congress considered in the fraud statutes. In a recent case about government impropriety, the Supreme Court has found that these statutes “do not proscribe schemes to defraud citizens of their intangible rights to honest and impartial government. . . . they bar only schemes for obtaining property.”⁶⁹ This suggests that the Court is open to the idea that intangible rights, such as the right to control one’s economic information, does not satisfy the property requirement under the fraud statutes and any prosecution that treats it as such would be improper. Prosecutors who wish to continue using the theory may hope that the court recognizes the right to control as an independent property right; but their hope would be misplaced. At the briefing and oral argument stages of *Ciminelli*, the government completely abandoned the theory and conceded that the Second Circuit erred in its reading of the property element.⁷⁰ This foreshadows the likelihood that the Supreme Court will dramatically limit the theory in a way that eliminates the possibility that the right to control may satisfy the property element of the fraud statutes.

C. Potential Impact of Limiting the Theory

Even though a limit to theory would provide needed clarity and notice for defendants, this does not mean that all problems would be solved. A significant impact will be felt in cases where

⁶⁵ Brief for Petitioner at 15, *Ciminelli v. United States*, 142 S.Ct 2901 (2022) (No. 21-1170) [hereinafter *Petitioner’s Brief*].

⁶⁶ *See id.* (discussing how making informed economic decisions about one’s assets was not included in common-law meanings of property).

⁶⁷ *Id.*

⁶⁸ *See Park*, *supra* note 34, at 174 (arguing that the right to control distorts the meaning of property); *see also* Law Professors’ *supra* note 57, at 12 (insisting that the right to control is inconsistent with Supreme Court precedent and common law conceptions of property).

⁶⁹ *Kelly v. United States*, 140 S. Ct. 1565, 1574 (2020).

⁷⁰ Transcript of Oral Argument at 34, *Ciminelli v. United States*, 142 S.Ct 2901 (2022) (No. 21-1170).

the information that the defendant misrepresented is valuable to the victim for a reason other than its expected economic impact. Race and identity-conscious government contracting programs are an example of this, as prosecutors routinely rest successful fraud prosecutions on the right to control theory in these cases.⁷¹ The Department of Transportation's Disadvantaged Business Enterprise Program ("DBE"), aims to increase the number of minority and economically disadvantaged individuals who participate in construction projects that receive federal funding.⁷² In this scenario, imagine that the defendant lies about their status as a minority or economically disadvantaged individual to win a construction project bid. This is different from the *Binday* and *Mittelstaedt* cases, because the government receives what it contracted for and there is no exposure to economic harm. However, the defendant's misrepresentation would be deemed material under the right to control, as articulated by the Second Circuit, because the government may not have selected it for the job if it knew otherwise. *U.S. v. Pfeiffer*, currently pending, concerns this very issue.⁷³ Prosecutors charged mail and wire fraud, accusing Pfeiffer and Colton of using Colton's business, to secure for Pfeiffer's company \$15.5 million in government contracts that it would otherwise have been unable to obtain because Colton's business was fraudulently qualified as a DBE. Prosecutors allege that there was no "commercially useful function" that Colton's business served.⁷⁴ The defendants filed a motion to dismiss arguing that the right to control cannot be applied because their misrepresentation bore no impact on the economic decision making of the government.⁷⁵ However, the District Court judge has delayed ruling on the defendant's motion to dismiss because of the Supreme Court's pending decisions in *Ciminelli*. If the Supreme Court does indeed limit the theory, defendants like Pfeiffer and Colton will be able to avoid prosecutions for their non-economic considerations. Prosecutors will likely criticize this, but the federal criminal justice system is not the answer for all unsavory behavior. Better solutions exist. One potential solution is to let Congress decide how to address this behavior. The same can be said for state legislatures. This may be an unsatisfactory answer, but it is the solution that is most likely to ensure fairness in the enforcement of fraud prosecutions.

VI. Conclusion

The right to control should not be completely eliminated. It is an important tool that enables prosecutors to address a number of cases that would be much more difficult to prosecute otherwise. However, the theory will undoubtedly be altered as the government abandoned it completely at oral arguments in the Supreme Court. The only question is how much. While there are valid applications of the theory that should not be upset, the Court must find a way to limit the theory without endangering the ability of prosecutors to bring cases against those that make

⁷¹ *Id.* at 32.

⁷² Disadvantaged Business Enterprise (DBE) Program, DEP'T OF TRANSP. (Nov. 25, 2022), <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>.

⁷³ Text Order, *United States v. Pfeiffer*, No. 1:16-cr-00023-RJA-MJR-2 (W.D.N.Y. July 28, 2022), ECF No. 162.

⁷⁴ *Id.*

⁷⁵ *Id.*

misrepresentations in cases like *Pfeiffer* discussed above. One way that the Court can do this is by using the limit imposed in *Mittelstaedt*: if the misrepresentation does not relate to *economic* harm, then a right to control prosecution is not possible. Critics would likely say that this does not go far enough, and that the Court should determine that the right to control is not a form of property that sustains any fraud prosecution. The problem with this is that it would likely eliminate the possibility of justifiable prosecutions in cases like *Binday* and *Dinome*. Whatever choice the Court makes, it will be worth monitoring how it implicates cases where defendants lie about their veteran status, identity, race, or other important, but non-economic, characteristics that may be important to the victim.

Applicant Details

First Name	Andrew
Last Name	Morales
Citizenship Status	U. S. Citizen
Email Address	morales.a24@law.wlu.edu
Address	<div>Address</div> <div>Street</div> <div>309 S Main St Apt #9</div> <div>City</div> <div>Lexington</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>24450</div>
Contact Phone Number	918-625-7069

Applicant Education

BA/BS From	Westminster College
Date of BA/BS	May 2020
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 10, 2024
Class Rank	50%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	National Environmental Law Moot Court Competition Robert J. Grey, Jr. Negotiations Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Peppers, Todd

pepperst@wlu.edu

Belmont, Elizabeth

belmontb@wlu.edu

Fraley, Jill

fraleyj@wlu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Andrew Morales
309 South Main Street, Apt. 9
Lexington, VA 24450

June 19, 2023

The Honorable Jamar K. Walker
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year student at Washington and Lee University School of Law. I am writing to apply for a 2024–2025 term clerkship in your chambers.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. The writing sample is a brief in support of a motion for summary judgment that I prepared for my Civil Litigation Practicum this past semester. Also enclosed are letters of recommendation from Professors Todd Peppers (540.761.3988), Beth Belmont (540.460.3421), and Jill Fraley (859.321.6242).

If there is any other information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,

Andrew Morales

ANDREW C. MORALES

309 South Main Street Apartment #9 | Lexington, VA 24450 | 918.625.7069 | morales.a24@law.wlu.edu

EDUCATION

Washington and Lee University School of Law, Lexington, VA

J.D. Candidate, May 2024

Academics: GPA (cumulative): 3.525 (Top 40%); GPA (2L): 3.821; Highest Grade in Evidence

Activities: Finalist, Robert J. Grey, Jr. Negotiations Competition
National Environmental Law Moot Court Competition Team
Latin American Law Student Association (LALSA)

3L Externship: Chambers of U.S. District Judge Robert S. Ballou

Research: Assistant to Professor Todd C. Peppers (research on Chief Justice Warren Burger)

Westminster College, Fulton, MO

B.A., Biochemistry and Philosophy, May 2020

Honors: Alpha Chi Honor Society (Initiated as Top 5% of Junior Class)

Activities: Undergraduate Scholars Forum, Physiology and Biochemistry Research
Westminster Seminar Mentor (Selected by Organic Chemistry Professor)
WestMo Tutors (Selected by Professor), Tutor for Statistics and Calculus I
President of Pre-Healthcare Professionals Association
Freshman Vice President of Student Government Association
Student Ambassador

EXPERIENCE

Huff, Powell & Bailey, LLC, Atlanta, GA

Summer Associate, May – August 2023

Baum, Glass, Jayne, Carwile & Peters, PLLC, Tulsa, OK

Summer Associate, June – August 2022

Worked in trial and appellate practice areas of complex commercial litigation, insurance defense, and energy law. Conducted legal research, wrote memorandums on critical legal questions, and attended depositions.

Secrest, Hill, Butler & Secrest, PC, Tulsa, OK

Summer Associate, May – June 2022

Worked in trial and appellate practice areas of products liability defense, premises liability defense, and medical malpractice defense. Conducted legal research, drafted dispositive motions and support briefs, wrote memorandums on critical legal questions, attended depositions and wrote deposition summaries, conducted opposition research on plaintiffs' expert witnesses for cross-examination, and attended hearings.

Janine Billings State Farm Agency, Tulsa, OK

Office Manager, Marketing, Customer Service, January – July 2021

Executed leadership role in general management during absence of agent. Managed payroll and banking, analyzed and delegated primary client concerns, and revamped marketing strategy via social media.

Lululemon, Tulsa, OK

Educator, August – February 2020

Greeted and appraised guest needs, remedied past product concerns, and educated guests on product details.

INTERESTS

Running, Weightlifting, Pick-Up Basketball

Philosophy of Mind, Russian Literature, Finding the Best Burger in Town

Print Date: 06/10/2023

Page: 1 of 2

Student: Andrew Christian Morales

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-4703

Entry Date: 08/30/2021

Date of Birth: 04/10/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 165	LEGAL WRITING I	B	2.00	2.00	6.00	
LAW 190	TORTS	B	4.00	4.00	12.00	

Term GPA: 3.193

Totals:

14.50 14.50 46.31

Cumulative GPA: 3.193

Totals:

14.50 14.50 46.31

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A-	4.00	4.00	14.68	
LAW 150	CRIMINAL LAW	B-	3.00	3.00	8.01	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	B	2.00	2.00	6.00	
LAW 179	PROPERTY	B+	4.00	4.00	13.32	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.314

Totals:

16.50 16.50 54.68

Cumulative GPA: 3.257

Totals:

31.00 31.00 100.99

2022-2023 Law Fall

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 642	Law and Geography Seminar	A-	2.00	2.00	7.34	
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 743	Healthcare Law	A	3.00	3.00	12.00	
LAW 775	Environmental Law	A	3.00	3.00	12.00	
LAW 865	Negotiations and Conflict Resolution Practicum	A-	2.00	2.00	7.34	

Term GPA: 3.898

Totals:

13.00 13.00 50.68

Cumulative GPA: 3.447

Totals:

44.00 44.00 151.67

Print Date: 06/10/2023

Page: 2 of 2

Student: Andrew Christian Morales

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116

**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 716	Business Associations	B+	4.00	4.00	13.32	
LAW 725	Conflict of Laws	A	3.00	3.00	12.00	
LAW 829	Civil Litigation Practicum	A	5.00	5.00	20.00	

Term GPA: 3.755**Totals:**

15.00

15.00

56.33

Cumulative GPA: 3.525**Totals:**

59.00

59.00

208.00

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 713	Sales		3.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	
LAW 934	Federal Judicial Externship		2.00	0.00	0.00	
LAW 934FP	Federal Judicial Externship: Field Placement		2.00	0.00	0.00	

Term GPA: 0.000**Totals:**

16.00

0.00

0.00

Cumulative GPA: 3.525**Totals:**

59.00

59.00

208.00

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	59.00	59.00	3.525
External:	0.00	0.00	
Overall:	59.00	59.00	3.525

Program: Law**End of Official Transcript**

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	Superior.
A	4.00	
A-	3.67	
B+	3.33	Good.
B	3.00	
B-	2.67	
C+	2.33	Fair.
C	2.00	
C-	1.67	
D+	1.33	Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu


University Registrar

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
Transfer Credit : Fall Transfer								

Organization : TRANSFERORGANIZATION

BIO-108	Intro to Biol Prin/Lab	CR	CR	4.00	4.00	0.00	0.00	
ENG-103	Academic Writing	CR	CR	3.00	3.00	0.00	0.00	
Term Totals :				7.00	7.00	0.00	0.00	0.0000
Career Totals :				7.00	7.00	0.00	0.00	0.0000

Advanced Placement Credit - The College Board

Transfer Credit : Fall Transfer

Organization : TRANSFERORGANIZATION

MAT-111	College Algebra	TR	TR	3.00	3.00	0.00	0.00	
Term Totals :				3.00	0.00	0.00	0.00	0.0000
Career Totals :				10.00	10.00	0.00	0.00	0.0000

Tulsa Community College - Tulsa, OK

Spring 2015

2014-2015 : Summer - Second Session

CHM-105-O	Intro to Chemistry	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				13.00	13.00	3.00	12.00	4.0000

2015-2016 : Fall Semester

BIO-124-B	Biodiversity (For Sci Majors)	LT	A	3.00	3.00	3.00	12.00	
BIO-125-B	Biodiversity Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-114-C	General Chemistry 1	LT	A	3.00	3.00	3.00	12.00	
CHM-115-C	General Chemistry I Lab	LT	A	1.00	1.00	1.00	4.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2015-2016 : Fall Semester								

LST-101-B	The Leader Within	LT	A	1.00	1.00	1.00	4.00	
MAT-114-D	Elementary Statistics	LT	A	3.00	3.00	3.00	12.00	
WSM-101-A	Westminster Seminar	LT	A	3.00	3.00	3.00	12.00	
Honor : Dean's List				Term Totals : 15.00 15.00 15.00 60.00 4.0000				
				Career Totals : 28.00 28.00 18.00 72.00 4.0000				

2015-2016 : Winter Term

HIS-104-O	History of US since 1877	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				31.00	31.00	21.00	84.00	4.0000

2015-2016 : Spring Semester

BIO-114-B	Biolog Processes (For Sci M	LT	A	3.00	3.00	3.00	12.00	
BIO-115-D	Biological Processes Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-124-C	General Chemistry II	LT	A	3.00	3.00	3.00	12.00	
CHM-125-B	General Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
LST-180-A	College Tutoring Skills I	LT	A	2.00	2.00	2.00	8.00	
MAT-124-A	Calculus I	LT	CR	5.00	5.00	0.00	0.00	
Honor : Dean's List				Term Totals : 15.00 15.00 10.00 40.00 4.0000				
				Career Totals : 46.00 46.00 31.00 124.00 4.0000				

Page : 1 of 4

* MEANS REPEAT OF A COURSE

() MEANS COURSE CREDIT NOT COUNTED

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DESTROY IT

 Kristin Guerrant, Registrar
Westminster College
REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.


REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct
Tulsa, OK 74105

Westminster College

501 Westminster Avenue
Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.
Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2015-2016 : Summer - First Session								
HIS-103-0	History of US to 1877	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				49.00	49.00	34.00	136.00	4.0000
2015-2016 : Summer - Second Session								
SOC-111-0	Intro to Sociology	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				52.00	52.00	37.00	148.00	4.0000
2016-2017 : Fall Semester								
CHM-304-A	Inorganic Chemistry (WIO)	LT	A	3.00	3.00	3.00	12.00	
CHM-314-B	Organic Chemistry I	LT	A	3.00	3.00	3.00	12.00	
CHM-315-B	Organic Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
LST-280-A	College Tutoring Skills II	LT	A	2.00	2.00	2.00	8.00	
PHL-221-A	History Ancient/Medieval Phil	LT	A	3.00	3.00	3.00	12.00	
PHY-201-B	Physics I	LT	A	4.00	4.00	4.00	16.00	
Honor : Dean's List								
Term Totals :				16.00	16.00	16.00	64.00	4.0000
Career Totals :				68.00	68.00	53.00	212.00	4.0000
2016-2017 : Spring Semester								
BIO-320-A	Bio Belize Orientation	LT	B	1.00	1.00	1.00	3.00	
CHM-324-A	Organic Chemistry II	LT	A	3.00	3.00	3.00	12.00	
CHM-325-A	Organic Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-410-A	Medicinal Chemistry	LT	A	3.00	3.00	3.00	12.00	
LST-380-A	College Tutoring III	LT	A	2.00	2.00	2.00	8.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.
Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2016-2017 : Spring Semester								
PHL-222-A -I	History of Modern Phil (WI)	LT	A	3.00	3.00	3.00	12.00	
PHY-212-C	Physics II	LT	A	4.00	4.00	4.00	16.00	
WSM-210-A	Westminster Seminar Mentc	LT	A	1.00	1.00	1.00	4.00	
Honor : Dean's List								
Term Totals :				18.00	18.00	18.00	71.00	3.9400
Career Totals :				86.00	86.00	71.00	283.00	3.9900
2016-2017 : May Term								
BIO-321-A	Biology in Belize Trip	PF	CR	3.00	3.00	0.00	0.00	
Term Totals :				3.00	3.00	0.00	0.00	0.0000
Career Totals :				89.00	89.00	71.00	283.00	3.9900
2017-2018 : Fall Semester								
BIO-203-A	Human Anatomy	LT	B	4.00	4.00	4.00	12.00	
LAT-101-A	Elementary Latin I	LT	WP	4.00	0.00	0.00	0.00	
PHL-242-A -I	Biomedical Ethics WI	LT	A	3.00	3.00	3.00	12.00	
PHL-410-A	Philosophy of Mind & Person	LT	A-	3.00	3.00	3.00	11.10	
WSM-301-A	Westminster Seminar Mentc	LT	A	2.00	2.00	2.00	8.00	
Term Totals :				16.00	12.00	12.00	43.10	3.5900
Career Totals :				105.00	101.00	83.00	326.10	3.9300
2017-2018 : Spring Semester								
BIO-370-A -I	Physiology (WI)	LT	B	4.00	4.00	4.00	12.00	
BIO-404-A -I	Biochemistry (WI)	LT	A-	4.00	4.00	4.00	14.80	
PHL-102-A	World Religions	LT	B	3.00	3.00	3.00	9.00	

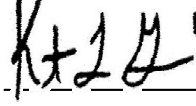
Page : 2 of 4

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 Kristin Guerrant, Registrar
Westminster College
REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.


REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra	Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2017-2018 : Spring Semester									
PHL-218-O	Introduction to Logic	LT	C		3.00	3.00	3.00	6.00	
Term Totals :					14.00	14.00	14.00	41.80	2.9900
Career Totals :					119.00	115.00	97.00	367.90	3.7900

2018-2019 : Fall Semester									
BIO-330-A	Virology WIO	LT	C		3.00	3.00	3.00	6.00	
BIO-398-A	Histology & Histopathology	LT	WF		3.00	0.00	0.00	0.00	
PHL-324-A	Ethics of Genetic Manipulati	LT	B		3.00	3.00	3.00	9.00	
PHL-333-A	Asian Philosophy/Religion	LT	A-		3.00	3.00	3.00	11.10	
Term Totals :					12.00	9.00	9.00	26.10	2.9000
Career Totals :					131.00	124.00	106.00	394.00	3.7200

2018-2019 : Winter Term									
EDU-230-O	Child & Adolescent Growth i	LT	D		3.00	3.00	3.00	3.00	
EDU-385-O	Diversity in Education	LT	C-		3.00	3.00	3.00	5.10	
Term Totals :					6.00	6.00	6.00	8.10	1.3500
Career Totals :					137.00	130.00	112.00	402.10	3.5900

2018-2019 : Spring Semester									
BIO-301-A	Genetics	LT	W		4.00	0.00	0.00	0.00	
ENG-206-O -I	British Lit since 1800 (WI)	LT	W		3.00	0.00	0.00	0.00	
PED-A15-A	Yoga	PF	W		1.00	0.00	0.00	0.00	
PHL-320-A	Philosophy and Literature (V	LT	W		3.00	0.00	0.00	0.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra	Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2018-2019 : Spring Semester									
PSY-113-B	Psychology as a Social Scie	LT	W		3.00	0.00	0.00	0.00	
Term Totals :					14.00	0.00	0.00	0.00	0.0000
Career Totals :					151.00	130.00	112.00	402.10	3.5900

2018-2019 : Summer - Second Session									
ENG-275-O -I	Intro to Creative Writing (WI	LT	A		3.00	3.00	3.00	12.00	
PED-A99-A	P.E. Activity Elective	PF	CR		1.00	1.00	0.00	0.00	
Term Totals :					4.00	4.00	3.00	12.00	4.0000
Career Totals :					155.00	134.00	115.00	414.10	3.6000

2019-2020 : Fall Semester									
PSY-113-O	Psych as a Social	LT	A		3.00	3.00	3.00	12.00	
Term Totals :					3.00	3.00	3.00	12.00	4.0000
Career Totals :					158.00	137.00	118.00	426.10	3.6100

2019-2020 : Fall Transfer									
Organization : TRANSFERORGANIZATION									
PHL-299	Philosophy Elective	TR	TR		3.00	3.00	0.00	0.00	
PHL-499	U.L. Philosophy Elective	TR	TR		3.00	3.00	0.00	0.00	
Term Totals :					6.00	0.00	0.00	0.00	0.0000
Career Totals :					164.00	143.00	118.00	426.10	3.6100

University of Tulsa - Tulsa, OK

Page : 3 of 4

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() MEANS COURSE CREDIT NOT COUNTED

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Westminster College
REGISTRAR

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REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2019-2020 : Spring Transfer								

Organization : TRANSFERORGANIZATION

AEX-LIT	Artistic Express-Literature	TR	TR	3.00	3.00	0.00	0.00	
BIO-299	Lower Level Elective	TR	TR	4.00	4.00	0.00	0.00	
Term Totals :				7.00	0.00	0.00	0.00	0.0000
Career Totals :				171.00	150.00	118.00	426.10	3.6100

University of Tulsa - Tulsa, OK

2019-2020 : Spring Transfer								
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Organization : TRANSFERORGANIZATION

SPA-101	Elementary Spanish I	TR	TR	4.00	4.00	0.00	0.00	
Term Totals :				4.00	0.00	0.00	0.00	0.0000
Career Totals :				175.00	154.00	118.00	426.10	3.6100

Maricopa Community Colleges - Tempe, AZ

Degree Information :

(1) 'Bachelor of Arts' Date Conferred : 5/9/2020

Major(s)

Biochemistry Major

Philosophy Major

Concentration(s)

Biological

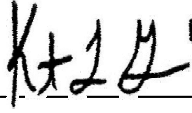
Page : 4 of 4

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Kristin Guerrant, Registrar
Westminster College
REGISTRAR

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REGISTRAR



WASHINGTON AND LEE
UNIVERSITY
SCHOOL OF LAW

TODD C. PEPPERS
VISITING PROFESSOR OF LAW

Telephone: (540) 458-8522
Facsimile: (540) 458-8488
E-mail: pepperst@wlu.edu

June 10, 2023

To Whom It May Concern:

I am writing this letter in support of Andrew Morales' clerkship application. For the reasons listed below, I think that Andrew would be a wonderful addition to your chambers. I recommend his application to you enthusiastically and without reservation.

Before I address Andrew's skill set, I want to briefly talk about my insights into legal clerkships. I had the great good fortune to clerk after law school – first for a federal district court judge and then a federal magistrate court judge. The clerkship experience so interested me that I subsequently wrote my graduate school dissertation on the subject. And since taking a teaching position in 2002, I have written, co-written, edited and/or co-edited four books and approximately twenty articles on law clerks. This includes two articles which surveyed federal appeals court and district court judges on their law clerk hiring and utilization practices.

The end result of this research is that I have a fairly accurate idea of what judges generally want in a law clerk as well as the skills needed to be a successful clerk. Of course, at a minimum, judges want to hire bright young people who have succeeded in law school. Candidates with a strong work ethic, maturity and solid research/writing skills are preferred. And, of course, "chamber fit" is important. Andrew checks off all these boxes.

Last semester, I had Andrew as a student in my Civil Litigation Practicum. The course is a semester-long simulation of a toxic tort case, in which students are divided into teams of attorneys to represent the different parties in the litigation. The students draft discovery requests, take depositions, and argue summary judgment motions. The simulation is based on a case that I once litigated, and it's a fairly complex and accurate representation of a wrongful death action (asbestos) combined with a loss of consortium claim.

Andrew was assigned to represent an insulation contractor and supplier. The simulation introduced a "wrinkle" into defending his client because our hypothetical state has a statute of repose defense in addition to the traditional issues/defenses in a negligent design/failure to warn case. I've been teaching this simulation for the last decade, and Andrew – *hands down* – did the best job of any student assigned to represent this specific defendant. This was especially true when it came to developing the statute of response defense, which students often struggle to even understand. And the summary judgment brief that he drafted was on par with the work product of a second or third year associate.

In light of Andrew's hard work, in May I asked him to work as my research assistant. I am in the early stages of working on a biography of Chief Justice Warren Burger, which includes doing archival work in the Burger archives at William and Mary. This summer, Andrew is doing remote research for me while he works in Atlanta. My plan is to have him help me dig through the extensive archives when he returns to Virginia this fall. This is important and complicated research, and the fact that I've asked Andrew to be my assistant is evidence of my high regard for his intellect and work ethic.

Finally, there is chamber fit. I think the world of Andrew. He is a friendly, personable, and articulate young man with a perpetual twinkle in his eye. While Andrew takes his studies seriously, he doesn't take *himself* too seriously (a common vice of law students) and has a good sense of humor. He will mesh easily with your existing chamber staff and become a great addition to your "family" of law clerks.

Justice Felix Frankfurter had an expression that he used when speaking of his best law clerks. "I bet on him," Frankfurter would say. Well, I bet on Andrew. And your bet on Andrew will pay dividends.

Please let me know if there is any additional information that I can provide. I can be reached at pepperst@wlu.edu or at (540) 761-3988.

Most sincerely yours,

A handwritten signature in black ink, appearing to read "Todd C. Peppers". The signature is fluid and cursive, with a large initial "T" and "P".

Todd C. Peppers

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am on the faculty at Washington and Lee University School of Law, and am writing to you in very enthusiastic support of Andrew C. Morales, a rising third year law student at W&L who is seeking a clerkship with your court.

Mr. Morales was enrolled in my Fall 2022 Evidence class. In a course that was full of remarkable students, Mr. Morales was the very top performing student on both his final exam and his other required written work (two motions in limine), by a quite significant margin. Moreover, my Evidence class had only 43 students, so over the course of our term together I was able to get to know Mr. Morales rather well. As I explain more fully below, based on my experience with Mr. Morales in class and outside of class, I am confident that he will be an asset to any court that has the pleasure of working with him in its chambers.

I teach my Evidence course with an experiential bent. To that end, in addition to requiring extensive case readings, deep engagement with the rules, and a cumulative multiple-choice final exam, I employ a problem-based approach that demands significant in-class discussion. I also require the students to draft and argue two complex motions in limine involving issues arising under Federal Rules of Evidence 401-404 and 702-703. As a consequence, I am able to develop deeper insights into my Evidence students' strengths and weaknesses than is perhaps typical of a traditional law school classroom.

Over the course of the term, I discovered that, while Mr. Morales has a warm, steady, low-key demeanor, he is absolutely not a wallflower. He was an active and incisive participant in what was a very smart and lively class overall. His in-class work and our out-of-class discussions demonstrated that he is an inquisitive, thorough, creative thinker, and that he is a close reader with very strong analytical skills. Mr. Morales also performed extremely well in his motion in limine oral arguments. He has excellent communication skills, and during his oral arguments he was poised, self-assured, clear and creative. He also did an excellent job engaging with me (as the court) when I pressed him with difficult questions.

Mr. Morales's written work on his two motions in limine was also superb – the strongest in the entire class. Both of his motions made excellent use of the applicable authority, and both were cogent, creative, well-organized, well-argued, and thorough without sacrificing conciseness. Based on my experience with his work, I am confident that Mr. Morales's writing and analytical skills would serve you well in your chambers.

I am also confident that you will find Mr. Morales to be a wonderful colleague. He is truly a delight to be around – he is kind-hearted, collaborative, bright and hard-working. He was a pleasure to teach and work with, and I am confident that he will bring much to your chambers.

I would welcome the opportunity to talk with you regarding Mr. Morales, and I encourage you to contact me with any questions you may have.

Very truly yours,

C. Elizabeth Belmont
Clinical Professor of Law

Elizabeth Belmont - belmontb@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I have known Andrew since his 1L year of Law School. He was a member of my Constitutional Law course, as well as two other courses including a small seminar course. I know Andrew well, having worked with him in multiple contexts during his time at law school. I have observed his constant quest for knowledge and dedication to his work and I am delighted to recommend him for a clerkship.

I have taught Andrew in very different courses: the first year constitutional law course, a very statutory-focused environmental law course, and a seminar called Law and Geography, which I consider to be essentially a super advanced writing course. Each of these courses presents different challenges to a law student from comprehending complex theories of governance to parsing statutes to writing a Supreme Court amicus brief. Andrew performed very well in each of those contexts. In the context of peer critiques, he was both honest and kind. He had the patience and curiosity to really engage with the coursework. He showed both fascination with and commitment to developing good arguments and mastering advanced legal writing skills.

More personally, Andrew is engaging, mature and very professional. He is enthusiastic about the study and practice of law and soaks up every opportunity provided to him. He presents himself in a measured, thoughtful way when speaking and unsurprisingly given that, he is meticulous in his writing. I believe that he would greatly value a clerkship experience and that he would thrive in that type of environment. Most importantly for the work of the court, given Andrew's abilities and his work ethic, I know that he would be a valuable contributor to chambers.

Best Regards,

Jill M. Fraley
Professor of Law

Jill Fraley - fraleyj@wlu.edu

WRITING SAMPLE

Andrew C. Morales
309 S. Main St., Apartment #9
Lexington, VA 24450
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(918)-625-7069

During a Civil Litigation Practicum that I enrolled in for the Spring 2023 semester, I prepared the attached brief in support of Defendant AC&S, Inc.'s motion for summary judgment. The practicum consisted of a simulated asbestos lawsuit, which was based on a real case that Professor Todd C. Peppers litigated during his tenure with an Atlanta law firm in 2001-2002. Each party to the simulation had a document repository to simulate discovery, and depositions of fake witnesses were taken with a court reporter at the law school. After developing an evidentiary record, the practicum culminated in a summary judgment hearing, as to which the attached brief was submitted for. You will notice that we were instructed to make *in limine* arguments in the footnotes as opposed to writing a separate motion.

IN THE CIRCUIT COURT
FOR THE SOUTHERN DISTRICT OF BLACKACRE

DAVID COSTELOE, Individually and as)	
Personal Representative of the Heirs and)	
Estate of NANCY W. COSTELOE,)	
Deceased,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 08CV1765
)	
AC&S, INC.,)	
JOHNS-MANVILLE, INC.,)	
NATIONAL GYPSUM,)	
PITTSBURGH-CORNING, INC.,)	
TIGHT FIT GASKETS & PACKING, AND)	
UNITED STATES GYPSUM,)	
)	
Defendants.)	

**DEFENDANT AC&S, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant AC&S, Inc. [hereinafter “AC&S”] and files this Memorandum of Law in Support of its Motion for Summary Judgment as to Plaintiff David Costeloe [hereinafter “Plaintiff”], Individually and as Personal Representative of the Heirs and Estate of Nancy W. Costeloe [hereinafter “Nancy”], Deceased, by showing the Court as follows:

I. INTRODUCTION

Nancy was born in 1954 and lived with her family in a series of Chattanooga, Blackacre homes until 1972. Between 1954 and 1972, Plaintiff alleges that Nancy’s father, Bill Webbe, worked with or around asbestos-containing products while he was employed at DuPont-Chattanooga as well as during the several occasions that he built homes on the side. Plaintiff further alleges that Nancy was exposed to asbestos by and through her father, either as a result of exposure

to dust from doing the family's laundry and/or from Nancy's presence at his home construction sites, resulting in damages to Nancy. Plaintiff claims he is entitled to damages for loss of consortium as a result of Nancy's asbestos-related death.

As a point of reference, AC&S is an insulation company that installed and, to a lesser extent, supplied insulation materials. Plaintiff's theory of liability against AC&S sounds in negligent failure to warn.

Based on the material facts before the Court, as to which AC&S contends no genuine issue exists, Plaintiff's allegations against AC&S fail for the following reasons:

- (1) There is no record evidence that Plaintiff's decedent, Nancy Costeloe, was exposed to products distributed or installed by AC&S. Even if she was somehow exposed, Plaintiff cannot show it was with sufficient frequency and regularity necessary to hold AC&S liable.
- (2) In the first alternative, there is no record evidence that AC&S was negligent. In other words, Plaintiff cannot show that AC&S knew or should have known about the dangers of asbestos.
- (3) In the second alternative, AC&S is entitled to partial summary judgment for its role in installing insulation at the DuPont-Chattanooga facility. AC&S's installation of insulation at DuPont-Chattanooga constituted an improvement to realty under the Blackacre statute of repose as to which no reasonable jury could disagree.

II. STATEMENT OF MATERIAL FACTS

AC&S submits the following concise written statement of material facts, as to which it contends no genuine issue exists, in support of its entitlement to judgment as a matter of law. *See* Bl. R. Civ. P. 56.

A. Deposition of Nancy W. Costeloe

The discovery deposition of Plaintiff's decedent, Nancy W. Costeloe, was taken on July 17, 2001 in Chattanooga, Blackacre. Nancy was born in February of 1954 in Chattanooga, Blackacre, where she lived with her family until graduating from high school in 1972. (Deposition of Nancy Costeloe, July 17, 2001, p. 10/7-12). Her father, Bill Webbe, worked at the DuPont plant in Chattanooga, starting sometime in the 1940's and retiring in the 1980's. (*Id.* at p. 8/1-5). Her father also started building homes in the summer of 1966 when Nancy was entering seventh grade. (*Id.* at pp. 9/27-10/5, 10/14-17). He built three homes for the family during the time period between 1966 and 1971. (*Id.* at p. 11/7-12).

Nancy was carefully cross-examined about her possible exposure to asbestos. Her household chores growing up included doing laundry. (*Id.* at p. 12/22-24). She became primarily responsible for the household laundry around 1966 when she was in seventh grade. (*Id.* at pp. 12/26-27, 14/2). This laundry included her father's work clothes, which she says were often covered with a white or creamy dust; she typically had to shake the dust off the clothes before putting them in the wash. (*Id.* at p. 13/1-10). In addition, Nancy would sometimes pick her father up from work at DuPont with her family, though she never visited her father while at work. (*Id.* at p. 9/13-15, 9/5-6). She did, however, spend time at the three family home construction sites. (*Id.* at p. 12/3-6). This testimony highlights Nancy's only possible sources of asbestos exposure in the record. Nancy was unable to identify any asbestos-containing products that her father may have worked around.

B. Deposition of Plaintiff David Costeloe

The deposition of David Costeloe was taken on October 14, 2001 in Chattanooga, Blackacre. This testimony is not relevant to the issues before the Court at summary judgment.

C. Deposition of William Earl Webbe, Jr. (“Bill Webbe”)

The deposition of Bill Webbe was taken on January 18, 1998 in Chattanooga, Blackacre in his own asbestos-related lawsuit. For the relevant time period in this litigation, Mr. Webbe worked as an insulator at DuPont-Chattanooga from 1954-1957 and as an insulation supervisor at DuPont-Chattanooga from 1958-1972. (Deposition of Bill Webbe, January 18, 1998, p. 11/4-17). DuPont’s internal insulators were only responsible for small repair and insulation jobs, while outside insulation contractors performed major construction jobs; DuPont’s internal insulators did not work with the outside insulation contractors. (*Id.* at pp. 11/26-12/2). Mr. Webbe never installed insulation materials as an insulation supervisor, though he might have been near people that did. (*Id.* at p. 11/20-24).

DuPont-Chattanooga hired AC&S for an insulation contracting job sometime in the early or mid-1960’s. (*Id.* at p. 12/4-8). Mr. Webbe remembers seeing AC&S’s workers come to work, but he didn’t work with them; on a few occasions, though, he checked out what they were doing. (*Id.* at p. 12/14-18). After AC&S finished their work, the DuPont insulators had to go in to clean it up and remove a lot of it. (*Id.* at p. 12/19-22). Notably, Mr. Webbe only saw AC&S’s workers installing foam glass and rubber installation—neither of which contain asbestos. (*Id.* at p. 12/24-29). He saw boxes of Johns-Manville Thermobestos insulation in AC&S’s storeroom, but he doesn’t know if Thermobestos was used.¹ (*Id.* at p. 12/29-31). Mr. Webbe says AC&S was replaced by another insulation contracting company after this job. (*Id.* at p. 12/9-12).

A lot of the insulation material DuPont-Chattanooga used didn’t have asbestos in it, including foam glass, Fiberglass, cork, rubber, and mineral wool. (*Id.* at p. 15/9-14). Importantly,

¹ Plaintiff may argue that there is a genuine issue of material fact as to whether Thermobestos was used because Bill goes on to say that Thermobestos must have been used if boxes were present. (*Id.* at p. 12/29-13/1). However, this latter testimony is speculation that would be inadmissible at trial and should not be considered at summary judgment because Bill lacks personal knowledge by his own admission. *See* Bl. R. Evid. 602.

AC&S was also in the business of supplying and installing these non-asbestos containing insulation products.

D. Deposition of Pete Smith

The deposition of Pete Smith was taken on March 17, 2002 in Lexington, Blackacre. Mr. Smith installed insulation as an insulator's helper at DuPont-Chattanooga from 1965-1970. (Deposition of Pete Smith, March 17, 2002, pp. 7/21-8/11). Mr. Smith described Mr. Webbe as a walking boss in his role as insulation supervisor, in that he would walk around and make sure the insulators were doing their job. (*Id.* at pp. 8/21-9/11).

Mr. Smith was carefully cross-examined about DuPont-Chattanooga's contractors and suppliers of insulation products. Mr. Smith could not speak to DuPont-Chattanooga's suppliers of insulation, but he saw AC&S's boxes present even when AC&S wasn't doing installation work; however, he never saw the materials inside AC&S's boxes nor whether the materials in the boxes were installed. (*Id.* at pp. 41/17-42/4). He also saw boxes of Kaylo, Johns-Manville Thermobestos, and Pittsburgh-Corning Unibestos, the insulation products usually used by DuPont-Chattanooga, but he doesn't know who supplied those. (*Id.* at pp. 42/5-14, 33/18-23). He doesn't know if AC&S supplied non-asbestos containing insulation to DuPont-Chattanooga. (*Id.* at pp. 42/22-43/4).

Mr. Smith recalls that AC&S was contracted for installing insulation at DuPont-Chattanooga on one occasion, sometime between 1965 and 1970. (*Id.* at pp. 38/8-13, 121/2-8). He saw them hanging insulation, and the job went on for less than a year. (*Id.* at pp. 37/17-24, 87/20-22). The contracting job was for an addition to the facility on another side of the plant from where Mr. Smith generally worked. (*Id.* at pp. 37/17-38/2, 87/1-5). He saw Mr. Webbe overseeing AC&S's work on this addition to the facility.² (*Id.* at p. 87/7-12). He says Mr. Webbe would go

² AC&S timely objected to the form of this question because it lacked proper foundation. The immediately preceding testimony indicates that Mr. Smith worked on a different side of the facility from AC&S's workers.

over there every day to check on their work.³ (*Id.* at pp. 87/14-19). On one occasion, three to six months after its original installation, Mr. Smith and the other insulators had to remove and replace part of the insulation that AC&S installed. (*Id.* at pp. 122/10-15, 124/23-125/8). The products they had to remove were the same types of insulation products normally used by DuPont, but there was more Unibestos present than where Mr. Smith usually worked. (*Id.* at pp. 127/22-128/12).

Mr. Smith was carefully cross-examined about his role in the home construction sites. Mr. Smith hung sheetrock and drywall at two houses that Mr. Webbe was building, one in 1967 and one in 1969. (*Id.* at pp. 12/15-24, 20/8-19). Mr. Smith never saw any of AC&S's workers at the home construction sites, and he never saw AC&S's boxes. (*Id.* at p. 43/10-17). The joint compound, sheetrock, and shingles are the only products at the home construction sites that he knew contained asbestos. (*Id.* at pp. 43/18-44/5). Notably, AC&S was not in the business of supplying or installing any of these products.

Mr. Smith was carefully cross-examined about whether he knew about the dangers of asbestos. DuPont-Chattanooga never provided any safety instructions for using asbestos products other than general safety warnings. (*Id.* at pp. 10/24-11/9). He also never saw any warning signs relating to the dangers of asbestos. (*Id.* at p. 72/9-12). Mr. Webbe never informed Mr. Smith about the inherent risks of asbestos. (*Id.* at p. 12/10-14). There were, however, rumors in the parking lot, where co-workers were talking about asbestos possibly being bad for them; nevertheless, Mr. Smith called this "pure speculation." (*Id.* at p. 139/12-23).

Without testimony that Mr. Smith had the capacity to see AC&S's workers from the other side of the factory, this testimony is insufficient to show that Mr. Smith had personal knowledge as required under Bl. R. Evid. 602, and, therefore, it should not be considered.

³ AC&S urges the Court to apply the same form objection to this testimony because it is a follow up question to the original question that was timely objected to, and, likewise, lacks the requisite foundation. *See* Bl. R. Evid. 602.

Mr. Smith was carefully cross-examined about his knowledge of the functions and uses of asbestos-containing insulation products. It was the standard of the industry to use asbestos-containing insulation.⁴ (*Id.* at p. 39/3-17). People buy insulation with the hope that it will be a permanent and fixed installation.⁵ (*Id.* at p. 38/14-24). While describing the general function of an insulator's job, Mr. Smith says "the idea is to get [insulation] sealed to the point where the insulation prevents the loss of heat and energy." (*Id.* at p. 124/18-21). Based on Mr. Smith's experience and observation and what he learned through training, experience, and observation, he opined that "[asbestos-containing insulation] was used because it was found to be effective, and it was probably easier maybe to use than some other type of insulation."⁶ (*Id.* at p. 39/3-14). He agrees it was the industry standard because it was "the best."⁷ (*Id.* at pp. 39/22-40/6). He also agrees that the insulation at DuPont-Chattanooga became a part of the factory after it was installed.⁸ (*Id.* at pp. 44/20-45/1).

E. Deposition of Sally Webbe

The deposition of Sally Webbe was taken on March 27, 2002 in Lexington, Blackacre. This testimony is not relevant to the issues before the Court at summary judgment.

⁴ Plaintiff objected to the question as calling for speculation. This objection should be overruled because Pete answered the question based on his "experience and observation and what [he] learned through training, experience, and observation." (*Id.* at 39/3-17). *See* Bl. R. Evid. 602.

⁵ Plaintiff objected to the question as asking for a legal conclusion. (*Id.* at p. 38/14-18). This objection should be overruled because Pete's experience and observation as an insulator's helper and what he learned through training, experience, and observation as an insulator's helper qualifies him to opine on whether insulation was meant to be permanent. *See* Bl. R. Evid. 602.

⁶ Plaintiff's objection should be overruled for the reasons stated in footnote 4. This is the same objection discussed *supra* at footnote 4. (*Id.* at 39/3-14).

⁷ Plaintiff's objection should be overruled because Plaintiff failed to state an objection with reasonably particularity. Saying "objection," without more, is not enough to preserve an objection on the record. (*Id.* at p. 39/22-24).

⁸ Plaintiff's objection should be overruled because Plaintiff failed to state an objection with reasonably particularity. Saying "objection," without more, is not enough to preserve an objection on the record. (*Id.* at p. 44/20-22).

F. Miscellaneous Documents

AC&S produced four letters in response to Plaintiff's discovery requests.⁹ The letters provide evidence of AC&S's very limited involvement in installing and supplying asbestos-containing insulation products at DuPont-Chattanooga. The first letter is dated August 21, 1956, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Douglas Allan, Vice President of Material Procurement at DuPont-Chattanooga. This letter describes DuPont-Chattanooga's plan to hire AC&S's insulators to install Johns-Manville Thermobestos in their Number One Boiler Room. *See* Exhibit A.

The second letter is dated September 24, 1956, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Douglas Allan, Vice President of Material Procurement at DuPont-Chattanooga. This letter confirms that AC&S had completed insulating the steam pipes and related equipment in the Number One Boiler Room as referenced by Exhibit A. *See* Exhibit B.

The third letter is dated June 22, 1968, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Bill Webbe, Insulation Supervisor at DuPont-Chattanooga. This letter indicates that AC&S sent DuPont-Chattanooga a shipment of Johns-Manville Thermobestos after Bill Webbe reached out to AC&S about a lost shipment of Kaylo. Notably, the language about a lost shipment of Kaylo does not permit the inference that AC&S ever supplied Kaylo before this lost shipment. *See* Exhibit C.

The fourth letter is dated February 12, 1973, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Bill Webbe, Insulation Supervisor at DuPont-Chattanooga. The letter states: "I cannot comply with your request for another 24 boxes of Pittsburgh Corning Unibestos." It goes

⁹ AC&S assumes that Plaintiff will rely on these letters at summary judgment, and, in that case, we do not contest that these letters are admissible as opposing party statements. *See* Bl. R. Evid. 801. If Plaintiff does not so rely, however, we move the court to strike these letters from the record as inadmissible hearsay. *Id.*

on to say that asbestos-containing products are no longer available, but that there is now an asbestos-free alternative available. Notably, AC&S concedes that the language “*another 24 boxes of... Unibestos*” supports the inference of at least one previous shipment of Unibestos; however, inferring that there was more than one previous shipment from this letter would amount to pure speculation. *See* Exhibit D.

Aside from what Plaintiff received in discovery, we submit the following two letters as evidence that AC&S was in the business of supplying and/or installing non-asbestos-containing insulation, and that AC&S could have supplied and/or installed non-asbestos-containing insulation at the DuPont-Chattanooga facility. The first letter is dated April 1, 1961, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Roger P. Cleary, Esq. at Cleary & Cleary. The letter indicates that AC&S “told DuPont repeatedly that cork insulation would provide superior insulation, and [AC&S] can’t afford to replace that fiber glass insulation and eat the cost.” *See* Exhibit E. Notably, neither cork nor fiber glass insulation products contain asbestos.

The second letter is dated March 23, 1966, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Mr. John Williams, Insulation Supervisor at Reynold Metals in Tuscumbia, AL. The letter indicates that AC&S “distribute[s] a wide-range of insulation products, from asbestos-containing pipe and block insulation for high-heat application to cork, rubber, mineral wool, fiber glass, and foam glass insulation.” *See* Exhibit F. Notably, cork, rubber, mineral wool, fiber glass, and foam glass insulation do not contain asbestos. AC&S submits these letters for the circumstantial, non-hearsay purpose of showing that AC&S was in the business of supplying and installing non-asbestos containing insulation at factories such as DuPont-Chattanooga, not for the truth of the matter asserted in the letters. *See* Bl. R. Evid. 801.

III. ARGUMENT AND CITATION OF AUTHORITIES¹⁰

A. Defendant's Burden On Summary Judgment

Upon motion for summary judgment, the Court must view the facts—and the inferences to be drawn from those facts—in the light most favorable to the party opposing the motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355 (4th Cir. 1985). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56(c) mandates entry of summary judgment against a party who “after adequate time for discovery and upon motion...fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). The moving party, however, is not entitled to summary judgment if the parties’ dispute over a material fact is genuine. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A genuine issue of material fact exists if a reasonable jury could return a verdict for the non-moving party. *Id.*

B. The Plaintiff Has Failed To Meet The Threshold Burden Of Demonstrating Exposure To AC&S's Product As Required Under Blackacre Law.

Under Blackacre law, the controlling case setting the standard for product identification in asbestos cases is *Blackston v. Johns-Manville Co.*, 764 F.2d 1480, 1485 (4th Cir. 1985). Under *Blackston*, there exists no presumption that a plaintiff was exposed to a defendant's asbestos-containing product simply by virtue of working at a job site at a time when a defendant's asbestos-containing product was in use. *Blackston v. Johns-Manville Co.*, 764 F.2d 1480, 1485 (4th Cir. 1985). To survive summary judgment, a plaintiff must affirmatively show that a particular defendant's product caused injury to him. *Blackston v. Johns-Manville*, 764 F.2d 1480, 1485 (4th

¹⁰ AC&S assumes *arguendo* that the *in limine* arguments raised by AC&S to exclude evidence are resolved in favor of Plaintiff for the purposes of this brief. AC&S does not waive objections and arguments raised herein.